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APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1967

No. 740

BRENDA K. MONROE, ET AL.,
PETITIONERS,

—v.—

BOARD OF COMMISSIONERS OF THE CITY
OF JACKSON, TENNESSEE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 19, 1967
CERTIORARI GRANTED JANUARY 15, 1968

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Dr. Eugene Weinstein—
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Relevant Docket Entries

1964

9–4 Filed Motion for further relief and to add parties as additional and/or intervening plaintiffs with Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M & N.

9–14 Filed Replication of defendants to Sept. 3, 1964— "Motion for Further Relief" filed against them.

9–28 Filed Pre-trial Order.

11–13 Filed Supplemental Replication to Motion of Sept. 4, 1964 filed against defendants.

11–13 Filed Petition of defendants, Board of Commissioners, City of Jackson, et al. with proposed plan for unitary non-racial zones for Junior High School system of City of Jackson to be effective beginning 1965-66 school year with plan (Exhibit A) attached.

11–30 Filed Specification of Objections filed by plaintiffs to plan for unitary non-racial zones for Junior High School system of City of Jackson filed by defendants.

1965

4–19 Filed additional Motion for Further Relief against defendants Board of Education, City of Jackson and C. J. Huckaba, City School Supt.

5–18 Filed Replication & Exhibits of City of Jackson to defendants additional Motion for Further Relief.

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7–30 Filed Memorandum Decision of Court relative to City Schools.

Relevant Docket Entries

1965

8–11 Filed Order on Memorandum Decision relative to City Schools.

9–7 Filed Notice of Appeal from Judgment entered Aug. 11, 1965—relating to City of Jackson Schools.

1966

2–14 Filed Court Reporter's Transcript of Proceedings.

Complaint

(Filed January 8, 1963)

1. (a) The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1331, as this action arises under the Fourteenth Amendment to the Constitution of the United States, Section 1, and Title 42, United States Code, Section 1981. The matter in controversy, exclusive of interest and costs, exceeds the sum or value of Ten Thousand ($10,000.00) Dollars.

(b) The jurisdiction of this Court is further invoked under Title 28, United States Code, Section 1343, in that:

This action is authorized by Title 42, United States Code, Section 1983, to be commenced by any citizen of the United States or other person within the jurisdiction thereof to redress the deprivation, under color of state law, statute, ordinance, regulation, custom or usage, of rights, privileges and immunities secured by the Fourteenth Amendment, Section 1, of the Constitution of the United States and secured by Title 42, United States Code, Section 1981, providing for the equal rights of citizens and of all persons within the jurisdiction of the United States.

2. This action is a proceeding under Title 28, United States Code, Sections 2201 and 2202 for a judgment declaring the rights and other legal relations of plaintiffs and all other persons, similarly situated, eligible to attend public schools owned, maintained and operated by the City Board of Education or School Commissioners of the City of Jackson, Tennessee and/or the County Board of Education of Madison County, Tennessee, in and for said City, County and State, and demanding an injunction, for the

purpose of determining and redressing questions and matters of actual controversy between the parties, to wit:

(a) Whether the custom, policy, practice or usage of the defendants in excluding plaintiffs and other persons, similarly situated, from public schools owned, maintained and operated by the City Board of Education or School Commissioners of Jackson, Tennessee and by the County Board of Education of Madison County, Tennessee, in and for said City of Jackson and County of Madison, State of Tennessee, and in requiring Negro school children residing in said City and County, to attend racially segregated schools operated by said City or County Boards of Education, or any other agency, public or private, solely because of their race or color, and in operating compulsory racially segregated school systems in and for said City of Jackson and County of Madison, pursuant to Sections 49-3701, 49-3702 and 49-3703, (Tennessee Code Annotated, 1955), and that portion of Section 12 of Article 11 of the Tennessee Constitution which makes it unlawful for white and colored persons to attend the same school, and pursuant to any other law, custom, policy, practice, or usage, violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States.

3. Plaintiffs bring this action pursuant to Rule 23, (a) (3) of the Federal Rules of Civil Procedure as a class action for themselves and on behalf of all other persons similarly situated, who are so numerous as to make it impracticable to bring them all before the Court, and who seek a common relief based upon common questions of law and fact.

4. Plaintiffs are Negroes and are citizens of the United States and of the City of Jackson, County of Madison and State of Tennessee. All adult plaintiffs are parents and/or guardians of the infant plaintiffs, and reside with the infant plaintiffs in the City of Jackson, and within the County of Madison, State of Tennessee. The infant plaintiffs are school children, eligible to attend the public schools of the City of Jackson and County of Madison, State of Tennessee, and have been attending said schools and can satisfy all requirements for admission to the public schools maintained and operated by the defendant, City Board of Education or School Commissioners of the City of Jackson, Tennessee in and for said City, and by the defendant, County Board of Education of Madison County, Tennessee in and for said County, including the schools to which they respectively applied as hereinafter shown.

5. (a) The defendant, Board of Commissioners of the City of Jackson, Tennessee constitutes the City Board of Education or School Commissioners of said City and is composed of the following Board Members or Commissioners: the defendants, Quinton D. Edmonds, R. L. Patey and R. E. Bailey, who together comprise the Board of Commissioners of Jackson, Tennessee constituting the City Board of Education or School Commissioners of said City and who are hereinbefore and hereinafter referred to as defendant, City Board of Education.

(b) The defendant, County Board of Education of Madison County, Tennessee is composed of the following Board Members: The defendants, R. E. Rooks, L. T. Greer, J. D. Lillard, Neil Smith, R. D. Pearson, Jimmy C. Bond, and Taylor Robinson, who together constitute the County Board

of Education of Madison County, Tennessee and who are hereinafter referred to as defendant, County Board of Education.

(c) Both of said defendants, City Board of Education and County Board of Education, exist pursuant to the Constitution and laws of the State of Tennessee as administrative departments or agencies of the State of Tennessee, discharging governmental functions and are by law, bodies corporate or continuous bodies or entities, and are being sued herein as such corporate or continuous bodies or entities.

(d) All of said defendants, above named as Board Members or Commissioners of the defendant, City Board of Education, and as Board Members of the defendant, County Board of Education, are citizens and residents of the State of Tennessee, and are being sued herein in their official capacities as such Board Members or Commissioners, and also are being sued herein as individuals.

(e) Defendant, C. J. Huckaba, is Superintendent of the City Schools of Jackson, Tennessee, and defendant, James L. Walker, is Superintendent of the Public Schools of Madison County, Tennessee. Both of said defendants hold office pursuant to the Constitution and laws of the State of Tennessee as administrative officers of the free public school systems of Tennessee. They are citizens and residents of the State of Tennessee and are made defendants herein and sued in their respective official capacities as stated hereinabove and also are being sued herein respectively as individuals.

6. The State of Tennessee has declared public education a State function. The Constitution of Tennessee, Article 11, Section 12, provides:

> "Knowledge, learning, and virtue, being essential to the preservation of republican institutions, and the diffusion of the opportunities and advantages of education throughout the different portions of the State being highly conducive to the promotion of this end, it shall be the duty of the General Assembly, in all future periods of this Government, to cherish literature and science."

Pursuant to this mandate the Legislature of Tennessee has established a uniform system of free public education in the State of Tennessee according to a plan set out in the Tennessee Code Annotated, 1955, Sections 49-101 through 49-3806, and supplements and amendments thereto. The establishment, maintenance and administration of the public school system of Tennessee is vested in a Commissioner of Education, a State Board of Education, County Superintendents of Public Schools, and County and City Boards of Education.

7. The public schools of the City of Jackson, Tennessee are under control and supervision of defendant, City Board of Education, and defendant, C. J. Huckaba, acting as an administrative department, division or agency, and as an agent of the State of Tennessee. The public schools of Madison County, Tennessee, are under the control and supervision of defendant, County Board of Education and defendant, James L. Walker, acting as an administrative department, division or agency and as an agent of the

State of Tennessee. Said City and County Boards of Education are respectively charged and vested with the administration, management, government, supervision, control and conduct of public schools within said City of Jackson and County of Madison, respectively, and are vested with all powers and duties pertaining to, connected with, or in any manner incident to the proper conduct and control of the public schools of said City and County, respectively. Said City and County Boards of Education are under a duty to enforce the school laws of the State of Tennessee, to maintain efficient public school systems in the City of Jackson and in Madison County, Tennessee, respectively; to determine the studies to be pursued, the methods of teaching, and to establish such schools as may be necessary for the completeness and efficiency of said respective school systems. Defendant, C. J. Huckaba, as Superintendent of Jackson City Schools, and defendant, James L. Walker, as Superintendent of the Madison County Schools, respectively, have the immediate control of the operation of the public schools of said City and County, and are the respective administrative agents for the defendants, City Board of Education and County Board of Education.

8. Plaintiffs allege that the defendant, City Board of Education and its Superintendent, C. J. Huckaba, acting under color of the laws of the State of Tennessee and County of Madison, have pursued and are presently pursuing a policy, custom, practice and usage of operating a compulsory racially segregated school system in and for the City of Jackson, Tennessee. Likewise the defendant, County Board of Education and its Superintendent,

James L. Walker, acting under color of the laws of the State of Tennessee and County of Madison, also have pursued and are presently pursuing a policy of operating a compulsory racially segregated school system in and for the County of Madison, State of Tennessee. The racially segregated school systems respectively operated by defendants, consist of "primary" systems of public schools limited to and/or designated for attendance by white children residing within the boundaries of said City of Jackson, and/or the County of Madison, respectively. Said schools are staffed by white teachers, white principals and white sustaining personnel. Said "white" schools are located in various parts of the City of Jackson and Madison County, respectively, and regardless of location, these schools are and have been designed as "white" schools and, with certain exceptions hereinafter mentioned, may be attended by white children only. Likewise said defendants, City Board of Education and County Board of Education, respectively maintain "secondary" systems of "colored" or "Negro" schools designated as such by defendants, and limited to attendance by Negro children. These school systems are respectively staffed by entirely Negro personnel; the teachers are all Negroes, the principals and all sustaining personnel are Negroes. These schools, regardless of location, are limited to attendance by Negro children. These compulsory racially segregated school systems operated respectively by the defendants, City Board of Education and County Board of Education are based solely upon race and color; attendance at the various schools is solely based on race and color and the assignment of personnel is determined solely upon the race and color of the children attending the particular school and the race and color of the personnel to be as-

signed. Plaintiffs are informed and believe and therefore aver upon said information and belief that the defendants have not maintained geographical zone lines. However, the schools in said "Negro" and "white" systems are and have been designated and maintained by defendants exclusively on the basis of race and color and assignments of students to these schools are and have been made by the defendants on the basis of the designation and past use of a school as a "Negro" or "white" school and the race or color of the pupil to be assigned, all white children being mandatorily assigned to the "white" schools and all Negro children being mandatorily assigned to the "Negro" schools. For many years, both the defendants, City Board of Education and County Board of Education, have respectively adopted, maintained and enforced and they still are respectively maintaining and enforcing this custom, policy, practice or usage of compulsory racially segregated systems in the schools of said City and County over which said defendants respectively have jurisdiction and control, pursuant to which they have required and are still requiring all Negro children, including the infant plaintiffs, to be assigned to said schools designated exclusively for Negro children.

9. From time to time since 1954 or 1955, Negro citizens and residents of the City of Jackson and County of Madison have requested the defendants to cease operating said compulsory racially segregated public school systems in and for the City of Jackson and County of Madison, State of Tennessee, and to comply with the decision of the Supreme Court of the United States in the Segregation Cases; and also for several years defendants have been fully aware of their affirmative duty under the decisions of said

Court to desegregate all public facilities under their jurisdiction and control. Defendants have continued, however, to operate said compulsory racially segregated public school systems in said City and County and have failed and refused to formulate or adopt any plan for desegregating same.

10. In August, 1961 several Negro children residing in Jackson, Tennessee made application to the defendant, City Board of Education, for admission to "white" schools. Said defendant treated these as applications for transfer, and in January, 1962, granted the applications of three of said Negro children for "transfer" to a single "white" school, simultaneously issuing the following official statement which was published in the Jackson Sun, a local newspaper, on the 25th day of January, 1962:

> "In compliance with the decree of the United States Supreme Court in the case of Brown vs. School Board, and the decrees of the United States District Court for the Western District of Tennessee, interpreting and implementing the decree of the Supreme Court in the Brown case, the Board of Commissioners (school board) of the City of Jackson, Tennessee, by unanimous decision pursuant to Tennessee's Pupil Placement Act, approves these applications effective today."

Thereafter said defendant continued and still continues to treat all applications of Negro school children for admission to "white" schools as applications for "transfer" under the Tennessee Pupil Assignment Law (Tennessee Code Annotated, 1955, Section 49-1741, et seq.), and of the many such applications it has received, it has permitted only four additional Negro school children to be enrolled in its

said "white" schools as of the current date. No white school children in the City of Jackson or County of Madison are or have ever been enrolled in any of the "Negro" schools of said City or County, and the schools of both of said school systems continue to be operated by defendants on the basis of "white schools" for white children and "Negro schools" for Negro children.

In June, 1962, the infant plaintiff, Brenda Kay Monroe, through her parents, made written application to the defendant, City Board of Education, to be admitted to Jackson Senior High School, a "white" school operated by said defendant, for the school year 1962-63 beginning in August, 1962. In July, 1962, the infant plaintiff, Harold Dwayne Walker, made application to said defendant, City Board of Education, to be admitted to the Alexander Elementary School, a "white" school operated by said defendant, for the 1962-63 school year beginning in August, 1962. Said infant plaintiffs pursued the administrative remedies provided under the Tennessee Pupil Assignment Law, but their said applications were denied by defendants solely on account of their race or color.

Plaintiffs aver that the aforesaid action, or any other action of defendants in attempting to adopt or apply the Tennessee Pupil Assignment Law as a plan of desegregation, is invalid and does not comply with the requirement of the Fourteenth Amendment to the Constitution of the United States in that said law is not and does not purport to be a plan of desegregation, and is inadequate as a plan for reorganizing the public schools into a nonracial system; nor does said law afford an adequate administrative remedy for plaintiffs, in view of defendants' continuing policy, practice, custom and usage of racial segregation and

their failure and refusal to reorganize said school systems on a nonracial basis.

11. At the beginning of the school term, i.e., to-wit: in August, 1962, the infant plaintiff, Brenda Kay Monroe, presented herself with her father and made proper and timely application for admission to said Jackson Senior High School, but was denied admission to said school by defendants, solely on account of her race or color. On the same day, the infant plaintiffs, Harold Dwayne Walker and George Stephanie Springfield, presented themselves together with some of their parents and made proper and timely applications for admission to the Alexander Elementary School. Both of said plaintiffs were refused and denied admission by defendants to the said Alexander Elementary School, solely on account of plaintiffs' race or color. All of said infant plaintiffs reside in close proximity to the respective schools to which they applied and would have been admitted had they been white children. The plainitffs, Brenda Kay Monroe and Harold Dwayne Walker, live much nearer to said schools to which they applied than to the "Negro" schools which they are and have been required by the defendants to attend. The infant plaintiff, Georgia Stephanie Springfield, had not attended school in the past, but was entering the first grade, and lives much nearer to Alexander Elementary School than to the "Negro" school which defendant, City Board, requires her to attend. The plaintiffs, Kenneth A. Martin and wife, Eva M. Martin, and their child, the infant plaintiff, Maria Bonita Martin, are presently residing near a school designated by the defendants as a "Negro" school; however, they join in this action for the reason that said infant plaintiff, Maria Bonita Martin, as well as other persons similarly situated,

are being denied their rights to enjoy a non-discriminatory public education by reason of the compulsory racially segregated public school systems which the defendants are maintaining and operating in and for the City of Jackson and County of Madison, State of Tennessee, as more fully shown hereinafter.

(a) Defendants' requirement of compulsory racial segregation imposes unreasonable burdens upon the infant plaintiffs and other Negro school children similarly situated who live near schools which white children living in the same area are permitted to attend, but plaintiffs and all other Negro children are refused assignment to these "white" schools and required to travel greater distances to "Negro" schools, solely because of their race or color.

(b) Plaintiffs aver that while some of them sought and seek admission of their children to the respective schools to which they applied as aforesaid, same being the schools of their choice and nearer to their homes, all of the plaintiffs further insist that the operation of said compulsory racially segregated school systems in the City of Jackson and in the County of Madison violates rights of the plaintiffs and members of their class which are secured to them by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Federal Constitution. The compulsory racially segregated school system is predicated on the theory that Negroes are inherently inferior to white persons and, consequently, may not attend the same public schools attended by white children, who are superior. The plaintiffs, and members of their class, are injured by the policy of assigning teachers, principals and other school personnel on the basis of the race and color of the children attending a particular school and the race and color of

the person to be assigned. Assignment of school personnel on the basis of race and color is also predicated on the theory that Negro teachers, Negro principals and other Negro school personnel are inferior to white teachers, principals and other white school personnel and, therefore, may not teach or serve white children. Thus all of the plaintiffs are affected and injured by defendants' aforesaid policy, practice, custom or usage, whether they are thereby excluded from a white school nearer their homes, or whether, on the other hand, they are required to attend a school nearer their homes but which is designated and stigmatized as a "Negro" school, from which all children of other racial extractions are excluded.

(c) Plaintiffs further aver that, while the "white" schools owned, maintained and operated by the defendants, City Board of Education and County Board of Education, are in general, modern, well-equipped and well-staffed, with adequate facilitie of all kinds and with broad, up-to-date curricula, textbooks and programs designed to afford their students a good education, plaintiffs are informed and believe, and aver upon said information and belief, that most of the "Negro" schools in both of said school systems, including the "Negro" City schools which the infant plaintiffs have been attending, are substandard, under or inadequately staffed, and poorly equipped, with lacking or inadequate library, cafeteria and health facilities, and with inadequate or outdated academic facilities, textbooks and other training aids which are frequently handed down to them after being discarded in the "primary" systems of "white" schools operated by defendants. Said City and County School Systems are closely related and interdependent insofar as the rights which plaintiffs here seek to

redress are concerned, as illustrated by the fact that all school children residing in the City of Jackson may apply and be admitted freely to the schools operated by said County Board of Education, except that said County Board likewise enforces racial segregation in said County Schools, limiting admission of Negro children to "Negro schools" therein. In addition, administrative tranfers have been rather freely permitted by defendants Boards of Education between said City and County School Systems, so long as this could be done without affecting said defendants' mutual policies and practices of racial segregation in the two school systems. Said County Board of Education operates the only High School in Madison County offering certain technical or vocational courses vital to adequate preparation of children with aptitudes for sciences and technology in a modern age, and "white" children residing in the City of Jackson as well as the County of Madison are freely admitted to this as well as other County "white" schools, but Negro school children of both the City and County are denied this right, but are permitted by defendants to attend only the "Negro" County Schools. Said County Schools are supported by public funds partially obtained through taxation of residents of the City of Jackson, including the plaintiffs and other members of their class.

12. The defendants apparently rely on the following provisions of the Tennessee Constitution and Statutes, which read as follows:

Constitution of 1870, Art. 11, Sec. 12:

"... No school established or aided under this section shall allow white and negro children to be received as scholars together in the same school. ..."

Tennessee Code, 1955, Sections:

"49-3701. Interracial Schools prohibited.—It shall be unlawful for any school, academy, college, or other place of learning to allow white and colored persons to attend the same school, academy, college, or other place of learning.

"49-3702. Teaching of mixed classes prohibited.—It shall be unlawful for any teacher, professor, or educator in any college, academy, or school of learning, to allow the white and colored races to attend the same school, or for any teacher or educator, or other person to instruct or teach both white and colored races in the same class, school, or college building, or in any other place or places of learning, or allow or permit the same to be done with their knowledge, consent or procurement.

"49-3703. Penalty for violations.—Any person violating any of the provisions of this chapter, shall be guilty of a misdemeanor, and, upon conviction, shall be fined for each offense fifty dollars ($50.00), and imprisonment not less than thirty (30) days nor more than six (6) months."

13. The infant plaintiffs and all other person similarly situated, in the City of Jackson and County of Madison, State of Tennessee, are thereby deprived of their rights guaranteed by the Constitution and laws of the United States.

Plaintiffs aver that the said constitutional and statutory provisions and all other laws, customs, policies, practices and usages of the State of Tennessee requiring or permitting segregation of the races in public education, fall with-

in the prohibited group which the Supreme Court of the United States holds must yield to the Fourteenth Amendment of the Constitution of the United States, and are of no force and effect.

Plaintiffs therefore aver that the said custom, policy, practice or usage of defendants in excluding plaintiffs and other persons, similarly situated, from public schools owned, maintained and operated by the defendants, City Board of Education and County Board of Education, in the City of Jackson and County of Madison, State of Tennessee, solely because of plaintiffs' race or color, and in operating said compulsory racially segregated public school systems in and for said City and County, pursuant to said constitutional and statutory provisions and any other law, custom, policy, practice or usage of the State of Tennessee requiring or permitting segregation of the Negro and white races in public education, deprives plaintiffs and all others similarly situated of the equal protection of the laws and of due process of law in violation of the Fourteenth Amendment of the Constitution of the United States, and is therefore unconstitutional and void and affords defendants no legal excuse to deprive plaintiffs of their rights herein prayed.

14. Plaintiffs and those similarly situated and affected, on whose behalf this suit is brought, are suffering irreparable injury and are threatened with irreparable injury in the future by reason of the acts herein complained of. They have no plain, adequate or complete remedy to redress the wrongs and illegal acts herein complained of, other than this suit for a declaration of rights and an injunction. Any other remedy to which plaintiffs and those similarly situated, could be remitted would be attended

by such uncertainties and delays as to deny substantial relief, would involve multiplicity of suits, cause further irreparable injury and occasion damage, vexation and inconvenience, not only to the plaintiffs and those similarly situated, but to defendants as governmental agencies.

Plaintiffs are informed and believe, and aver upon said information and belief, that although classes for the Spring Semester, 1963 begin in the Negro schools of said City and County on or about 14 January 1963, similar classes in the "white" schools of said City and County do not begin until 21 January 1963. As aforesaid, plaintiffs requested admission to the public schools of said City and County on a racially nondiscriminatory basis several months ago, and both defendants, City and County Boards of Education, are or should have been aware for many years of their duty to initiate and make known to school patrons a plan or plans for desegregation of said school systems. Notwithstanding their knowledge of this duty, they have not done so, and there is no reason why, in view of the foregoing circumstances, the said infant plaintiffs and other Negro school children, similarly situated, should not be admitted to the public schools of said City and County on a nondiscriminatory basis at once. The infant plaintiff, Georgia Stephanie Springfield, entered public school for the first time in August, 1962 and theretofore had not been subjected to the inherent evil of racially segregated education. Plaintiffs further aver that they and other Negro school children, similarly situated, will suffer irreparable injury in the future unless defendants are restrained by the temporary restraining order and injunction of this Court for the reasons set out hereinabove, and also for the reason that the defendants very apparently intend to continue their said policies and prac-

tices of compulsory racial segregation; and if the plaintiffs and other Negro children similarly situated, are not granted immediate relief now, they will continue to be subjected to the inherent evil and inequality of said racial segregation in the public schools for an indefinite period of time, resulting in immediate and lasting harm and damage not only to them, but also to white children who are thereby being indoctrinated daily with concepts of themselves as a master or superior race, while infant plaintiffs will continue to be subjected daily to the said indoctrination classifying them as an inferior race.

15. There is between the parties an actual controversy as hereinbefore set forth.

WHEREFORE, PLAINTIFFS respectfully pray:

The Court issue forthwith a temporary restraining order and/or a preliminary injunction against the defendants, immediately restraining and enjoining them and each of them, their agents, employees, servants or attorneys, from refusing to admit the infant plaintiffs and other persons similarly situated, to the Jackson Senior High School and Alexander Elementary School, or any other public school, institution or facility operated by defendant, City Board of Education, or by defendant, County Board of Education, in and for the City of Jackson and County of Madison, State of Tennessee, because of plaintiffs' race or color, pending further orders of the Court.

The Court adjudge, decree and declare the rights and legal relations of the parties to the subject matter here in controversy in order that such declaration shall have the force and effect of a final judgment or decree.

The Court enter a judgment or decree declaring that the custom, policy, practice or usage of defendants in maintaining and/or operating compulsory racially segregated public school systems in and for the City of Jackson and the County of Madison, State of Tennessee, and in excluding plaintiffs and other persons similarly situated, from the Jackson Senior High School and Alexander Elementary School, or any other public schools, institutions or facilities maintained and/or operated by defendants, City Board of Education and County Board of Education, solely because of race or color, pursuant to the above quoted portions of Article 11, Section 12 of the Constitution of Tennessee, Sections 49-3701, 49-3702 and 49-3703 of the Tennessee Code Annotated, 1955, and any other law, custom, policy, practice and usage, violates the Fourteenth Amendment of the Constitution of the United States, and is therefore unconstitutional and void.

The Court issue a permanent injunction forever restraining and enjoining defendants and each of them, their agents, employees, servants or attorneys, from maintaining and/or operating compulsory racially segregated systems of public schools, institutions or facilities for education in and for the City of Jackson and County of Madison, State of Tennessee, and from refusing to admit plaintiffs and other persons similarly situated to said Jackson Senior High School, Alexander Elementary School, or any other public schools, institutions or facilities operated by defendants, City Board of Education and County Board of Education, in and for the said City and County, because of plaintiffs' race or color.

In addition to the immediate and preliminary relief prayed hereinabove in behalf of the named infant plaintiffs and other persons similarly situated, the plaintiffs

pray that this Court also expeditiously issue a preliminary and/or permanent injunction directing defendants, City and County Boards of Education, either to reorganize immediately, or in the alternative to present to the Court at an early date a complete plan for the prompt and speedy reorganization of the entire systems of public schools, institutions and facilities within their respective jurisdiction and under their control, into unitary, nonracial systems of schools, institutions and facilities, which shall include a plan for the assignment, education and treatment of students or enrollees on a nonracial basis, the assignment and treatment of teachers, principals, staff and other school, institutional, educational or other sustaining personnel on a nonracial basis, the construction and use of all plant or other facilities and the approval of budgets on a nonracial basis, operation of the school transportation system on a nonracial basis, and the elimination of all and any other discriminations in said systems and in the operation and use of schools, institutions, facilities, curricula or programs of any nature whatsoever in said City and County School Systems, which are based upon race or color. Plaintiffs pray that if this Court directs defendants to present such desegregation plans, that this Court will retain jurisdiction of this case pending Court approval and full and complete implementation of defendants' plans.

Plaintiffs further pray that the Court will allow them their costs herein and such further, other or additional relief as may appear to the Court to be equitable and just.

Answer of Board of Commissioners of City of Jackson, Tenn.

(Filed February 26, 1963)

Come the defendants, Board of Commissioners of the City of Jackson, Tennessee, constituting the Board of Education or School Commissioners of said City, and Quinton D. Edmonds, R. L. Patey, and R. E. Bailey, Board Members or Commissioners, who together as such comprise the Board of Commissioners of the City of Jackson, Tennessee, constituting the Board of Education or School Commissioners of said City, and C. J. Huckaba, City School Superintendent and/or Superintendent of Public Instruction of the City of Jackson, Tennessee, and for their answer to the complaint filed hereto against them and other defendants, respectfully show to the Court:

I

Said defendants admit that the jurisdiction of the District Court of the United States for the Western District of Tennessee, Eastern Division, in which Court the complaint filed herein is pending, is properly invoked under the provisions of Title 28, United States Code, Sec. 1343; that this is a proper action authorized by Title 42, United States Code, Sec. 1983 and Title 28, United States Code, Sec. 2201 and 2202 on the part of original plaintiffs, and others similarly situated, under Rule 23 of the Federal Rules of Civil Procedure.

II

Said defendants admit the status of the original plaintiffs as set forth in the complaint; admit that they are the public school board members and the superintendent of the

public school system of Jackson, Tennessee, as alleged, and as such control and operate the public schools in and for the City of Jackson, Tennessee. They deny that they exercise or have the right to exercise any control over the public schools of Madison County outside the City of Jackson, Tennessee, and deny that the Madison County and City of Jackson school systems are interrelated, or interdependent.

III

Said defendants admit that the original plaintiffs have a right to attend a racially desegregated public school within the City of Jackson, Tennessee.

Defendants deny that they have operated a compulsory bi-racial school system in Jackson, Tennessee since the 1961-1962 school term when three negro pupils were voluntarily admitted to Tigrett Junion High School (formerly attended by white pupils only) on their individual applications for transfer and enrollment pursuant to the Provisions of Tennessee's Pupil Placement Act:

Defendants would show that beginning with the 1961-1962 school term the City of Jackson school system has been operated pursuant to the Provisions of Tennessee's Pupil Placement Act and the decision of the United States District Court for the Western District of Tennessee, in the case of Northcross, et al, vs. Board of Education of the Memphis City Schools, et al; that in addition to the three negro pupils admitted as aforesaid to Tigrett Junior High School during the 1961-1962 school term, four negro pupils were in like manner voluntarily admitted to Alexander Elementary School (formerly attended by white

pupils only) during the 1962-1963 school term. Since said 1961-1962 school term the City of Jackson school system has not been maintained as a racially segregated school system but rather defendants required that applications for transfer and enrollment in the school system be initiated by pupils on an individual basis and assignments be made under the Provisions of Tennessee's Pupil Placement Act. Accordingly, there has been no compulsory racial integration or segregation applied to pupils seeking a transfer and enrollment in a desegregated school except where applicants for transfer and enrollment were judged not to qualify for such transfer and enrollment pursuant to the Provisions and Requirements of Tennessee's Pupil Placement Act.

Defendants admit that "negro children cannot be required to apply for that to which they are entitled as a matter of right"; that they have a constitutional right to attend a racially desegregated school subject to non-racial qualifications; and that "the (Tennessee's) Pupil Assignment Law is not adequate as a plan for reorganizing the (City) schools into a non-racial system." (Quotations in the above paragraph are from the opinion of the United States Court of Appeals for the Sixth Circuit in the Case of Northcross, et al, vs. Board of Education of the Memphis City Schools, et al, decided March 23, 1962).

IV

Said defendants deny that schools attended by Negro pupils are substandard or in any way unequal to schools attended by white pupils; deny the alleged inferiority of Negro schools; and, on the contrary, defendants would

show that negro schools are equal and in some instances better than other schools and Negro teachers and school personnel are ably qualified for positions they hold.

Defendants would further respectfully show that equality of Negro and white schools, or the lack of equality is not material to the issue in this cause; that they are diligently seeking to resolve extreme administrative difficulties attendant on racially desegregating pupils in the public schools of the City of Jackson in such manner that maximum educational opportunities be provided and fostered for pupils on a non-racial basis under a wise and acceptable desegregation plan.

V

All allegations of the complaint not herein either specifically admitted or denied are here and now generally denied and denied as fully as though specifically denied herein.

And now having fully answered, these defendants pray to be hence dismissed.

/s/ William T. Diamond

William T. Diamond
Attorney for above-named defendants
211 National Bank of Commerce Building
Jackson, Tennessee

Order Granting Summary Judgment

(Filed June 19, 1963)

This cause was heard the 14th day of June, 1963, before the Honorable Bailey Brown, United States District Judge, upon the entire record, and especially upon the motion for summary judgment filed by the plaintiffs, the transcript of evidence heretofore introduced in this cause on 19 January 1963 and 15 February 1963 which has been filed as a part of the record, the brief filed by plaintiffs in support of said motion for summary judgment, and upon the statements, admissions and arguments by counsel for the respective parties, from a consideration of all of which the Court finds, holds, and DECREES as follows:

1. The motion of plaintiffs for summary judgment should be and the same is hereby granted; but the present relief awarded to plaintiffs will be in the form of a requirement that the defendants, City Board of Commissioners, etc., et al., and County Board of Education, etc., et al., file with the Court plans for desegregation of and elimination of racial discrimination in the respective school systems of the City of Jackson and County of Madison within the time and in the manner as provided hereinafter.

2. The defendants, City Board of Commissioners, etc., et al., will file with the Clerk of this Court not later than 20 July 1963 a complete plan for desegregation of and elimination of racial discrimination in the school system of the City of Jackson, Tennessee. The plaintiffs are allowed to and including 27 July 1963 within which to file specifications of objection, if any, to said desegregation plan; and a hearing will be held on said plan filed by the said City Board of Commissioners, before this Court in

Memphis, Tennessee, at 10:00 A.M. on Tuesday, 6 August 1963.

3. The defendants, County Board of Education, etc., et al., will file with the Clerk of this Court not later than 15 July 1963, a complete plan for desegregation of and elimination of racial discrimination in the school system of Madison County, Tennessee. The plaintiffs are allowed to and including 22 July 1963 within which to file specifications of objection, if any, to said desegregation plan, and a hearing will be held on said plan filed by the said County Board of Education, before this Court in Memphis, Tennessee, at 10:00 A.M. on Friday 26 July 1963.

City of Jackson School Desegregation Plan

(Filed July 19, 1963)

Pursuant to order of the Court entered June 19, 1963, the Board of Commissioners of The City of Jackson, Tennessee, file the following plan:

The Board of Commissioners (School Board) of the City of Jackson, having been ordered by the District Court of the United States, Western District of Tennessee, Eastern Division, to file a plan for the desegregation of the City Schools of the City of Jackson School System, does hereby submit a plan of desegregation.

The plan has the purpose of meeting the requirements of the order of this Court, of continuing to provide the best possible education to all students, and of securing to each individual student the best education within the capabilities of such student. This plan also will help preserve to some extent a degree of tranquility between the races within The City of Jackson.

1. Effective with the fall term of the 1963-64 school year, compulsory segregation of students by race within city schools is abolished for the first three grades within elementary schools. Effective with the fall term of the 1964-65 school year compulsory segregation of students by race within city schools is abolished for grades 4, 5 and 6 within elementary schools. Each year thereafter at the beginning of the fall term, compulsory segregation of students by race will progressively be abolished in the next higher grade in Junior High and then Senior High Schools. The Civil Technician Class will be opened to students of all races otherwise qualified beginning with 1963-64 school year under proper regulations to be established by the School Department.

City of Jackson School Desegregation Plan

2. The superintendent of Schools, with the advice and approval of the Board of Commissioners, shall immediately prepare non-racial geographical district boundaries for each school within the City School System and as compulsory segregation is abolished within the School System said boundaries shall be effective for those desegregated grades. These boundaries may from time to time be revised for a more efficient or economical use of City facilities or other appropriate cause that may occur.

3. As the grades are progressively desegregated, any student living within a district so created may, if otherwise eligible, attend the proper desegregated grade of the school within such district without regard to race.

4. Any student living within the City of Jackson enrolled in a City School for the 1962-63 school year may, if otherwise eligible, continue to attend the same school until graduation from, or completion of, such school, regardless of the district lines to be created as set out above. Any student living outside the corporate limits of The City of Jackson enrolled in a City School for 1962-63 year may, if otherwise eligible, attend a City School until further notice but only on condition that such student agree to accept assignment by the Superintendent of Schools to a school for the convenience of the City School System.

5. New students, otherwise eligible, living within the Corporate Limits of the City of Jackson entering the City Schools for the first time in a grade desegregated under this plan, may register at the school of their choice even

though such school may be outside the district area in which said student lives. The Superintendent will then make assignment on the basis of districts set up in accordance with paragraph 2. However, the Superintendent may, if sufficient facilities exist, at his option, assign said pupil to the school selected by the student. New students living outside the corporate limits of The City of Jackson desiring to enter a City School for the first time in a grade desegregated under this plan may, if otherwise eligible, attend city schools until further notice but only on condition that such student agree to accept assignment by Superintendent of Schools to a school for the convenience of the City School System.

6. (a) The Superintendent of Schools shall have the right to grant, or require, transfer in any individual case where necessary for obtaining maximum economy and efficiency of school facilities and personnel, considering, among other things, school capacity, class room capacity, central facilities capacity, teacher-pupil ratio, grade load, or for the accomplishment of any other purpose of this plan.

(b) The Superintendent shall further have the right to grant, or require, individual transfer where such transfer is necessary for the attainment of the best possible education by the individual.

(c) Any student may, for reasons satisfactory to such student and his or her parents, apply for a transfer to any other school in the City School System for which said student is otherwise eligible to attend and the Superintendent of Schools may, if sufficient space and other facili-

ties exist in the school to which the transfer is requested, grant such application at his option and as the best interest of the City School System may appear to the Superintendent of Schools. Transfer during a school semester however is discouraged and such transfers will be granted only because of unusual circumstances and for good causes shown.

(d) All assignments, transfers or re-location of pupils will be in accordance with the Tennessee Pupil Assignment Law and appropriate regulations of the School Department.

Memorandum Opinion of the United States District Court for the Western District of Tennessee

(Filed August 12, 1963)

This is a suit filed by certain minors and their parents, all Negroes, seeking desegregation of the public schools of the City of Jackson and Madison County, Tennessee. After disposition of certain preliminary motions, the Court granted plaintiffs' motion for a summary judgment and ordered the two Boards to submit plans for desegregation. The Court has held a hearing on the plan submitted by the City and plaintiffs' objections thereto, and this memorandum decision deals only with the City's proposed plan.

Under the plan submitted by the City Board, grades ones through three would be desegregated beginning with the school year 1963-64, grades four through six beginning with the school year 1964-65, and thereafter, starting with the seventh grade, and beginning with the school year 1965-66, one additional grade would be desegregated each year. The plan does not specifically describe the proposed new unitary zones or districts to be applicable to desegregated grades, stating only that they would in due course be established. It developed at the hearing that a map setting out the proposed unitary zones for elementary schools was in existence and had the tentative approval of the City Board. For the reason that a realistic appraisal could not otherwise be made of the plan submitted, the Court asked that the proposed zoning map be placed in evidence, which was done. It appeared that no such map of proposed unitary zones for the junior and senior high schools is now in existence.

Under the proposed plan, all pupils heretofore enrolled would be entitled to attend the school in which they are presently enrolled until they graduate from that school

even though they do not live in the unitary zone or district of that school. All pupils entering grades desegregated under the plan would be entitled to attend the school in whose zone they reside, without regard to race and whether or not they were previously enrolled therein, but it is not clear what the priority of the rights would be between such pupils and pupils already attending that school. Pupils entering a desegregated grade for the first time could attend any school they choose provided their choices were approved by the Superintendent. Again, the plan is not altogether clear as to the priority of the rights to attend a particular school between pupils who live in the unitary zone and those who live outside.

Under the plan, general authority is vested in the Superintendent to grant or require transfers with specific standards to be applied, none of which has to be with race or color.

Pupils living outside the city limits may, under the plan, be admitted to the schools provided they accept assignment to schools designated by the Superintendent.

A "Civil Technician Class," which apparently trains pupils to be helpers to civil engineers, would be desegregated beginning in the school year 1963-64.

The specification of objections filed by plaintiffs alleges, in substance, that the proposed plan in no way meets the constitutional requirements established by the School Segregation Cases.

The school system is approximately 40% Negro. There are five elementary schools, two junior high schools and one high school heretofore attended primarily* by white

* There has been some voluntary desegregation which will be referred to hereafter.

pupils. There are three elementary schools, one junior high and one high school heretofore attended only by Negroes. The total school population is approximately 7900. The homes of Negro pupils are heavily concentrated in certain areas of the city. The faculties are also segregated.

In support of its contention that it needs the time contemplated by the plan submitted, the Board showed by proof that a standard achievement test administered to the pupils indicates that there has been little difference in achievement levels between white and Negro pupils in the early grades, but that gradually and by the time the sixth grade is reached, the white pupils have reached an achievement level substantially in advance of the national median and the achievement level of Negro pupils has fallen substantially below the national median. The proof shows that if Negro children were in substantial numbers integrated initially into the upper grades, many of them would not be able to compete and would tend to fall behind, become frustrated, a problem to the school, and finally perhaps drop out of school. It also shows that those who are integrated initially in the lower grades are not as likely to develop this differenee in achievement level. Therefore, the Board argues, it is to the interest of both the white and Negro pupils to integrate them initially only in the lower grades as proposed by the Board.

The Board also showed that children of the age of those attending the lower grades are not difficult to handle and to discipline, but that children, upon reaching their early teens, in junior and senior high, frequently tend to resent direction and discipline. Therefore, the Board argues, it would be a mistake to accentuate this problem by requir-

ing the adjustment to integration by white and Negro children for the first time at this difficult age.

The Board also showed that it heretofore voluntarily integrated seven Negro pupils, which action, it argues, is at least some indication of an effort in good faith to comply with the law.

With respect to tangible factors, the proof did not show any substantial difference betwen the quantity and quality of the buildings, equipment and curricula of the "white" and "Negro" schools but it did show that the faculty in the "white" schools is superior.

The proof showed that both white and Negro children will, where they have a choice, frequently choose to attend a school in which they will be in a majority.

Subsequent to the decision of the Supreme Court holding compulsory segregation in public schools unconstitutional (Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954)), and that desegregation must proceed with all deliberate speed (second Brown opinion, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083 (1955), the Court stated as dicta in Watson v. City of Memphis, 373 U.S. 526, 83 S.Ct. 1314, 10 L.Ed.2d 529 (1963), a holding dealing with desegregation of public parks:

> "* * * Given the extended time which has elapsed, it is far from clear that the mandate of the second Brown decision requiring that desegregation proceed with 'all deliberate speed' would today be fully satisfied by types of plans or programs for desegregation of public educational facilities which eight years ago might have been deemed sufficient. Brown never contemplated that the concept of 'deliberate speed' would countenance indefinite delay in elimination of racial

barriers in schools, let alone other public facilities not involving the same physical problems or comparable conditions.

* * * * *

"Most importantly, of course, it must be recognized that even the delay countenanced by Brown was a necessary, albeit significant, adaptation of the usual principle that any deprivation of constitutional rights calls for prompt rectification. The rights here asserted are like all such rights, present rights; they are not merely hopes to some future enjoyment of some formalistic constitutional promise. The basic guarantees of our Constitution are warrants for the here and now and, unless there is an overwhelmingly compelling reason, they are to be promptly fulfilled. The second Brown decision is but a narrowly drawn, and carefully limited, qualification upon usual precepts of constitutional adjudication and is not to be unnecessarily expanded in application."

Thus it is clear that a gradual plan for desegregation which constituted "all deliberate speed" in 1954 might not satisfy that mandate of the Supreme Court if adopted in 1963.

[1] The reason recognized by the law for allowing time for desegregation is the existence of administrative problems (second Brown opinion, supra.) However, if administrative problems exist, the extent to which tangible factors are equal in the Negro and white school systems has been held to be a major consideration in determining how much time should be allowed. Boyce v. Board of Education of Humphreys County, 7 Race Rel.L.Rep. 372, 378

(M.D.Tenn.1961). In determining whether a plan submitted by a school board is offered in a good faith effort to comply with the law, the Court should consider voluntary efforts, if any, to bring the system into compliance. (See, for example, Dove, et al. v. Parham, et al., 181 F.Supp. 504, 513 (E.D.Ark.1960) aff'd 282 F.2d 256 (C.A. 8, 1960).)

[2] In taking into account the foregoing considerations, the aim of the Court should be to bring about abolition of discrimination as early as possible consistent with the educational well being of the white and Negro school children. It is with this aim in view that we apply the law to the facts of this case.

While we believe, and so find, that the plan submitted constitutes a good faith effort by the Board to comply with the law, we do not believe that it fully meets the requirement of "all deliberate speed" as contemplated by the language of the Supreme Court in the Watson case, supra.

In terms of numbers, as stated, the ratio of Negro to white pupils is approximately 40-60. This figure is, however, somewhat misleading as a measure of the extent to which integration will actually occur under the proposed plan. Because the homes of Negro children are concentrated in certain areas of the city, a plan of unitary zoning, even if prepared without consideration of race, will result in a concentration of Negro children in the zones of heretofore "Negro" schools and white children in the zones of heretofore "white" schools. Moreover, this tendency of concentration in schools will be further accentuated by the exercise of choice of schools, even though the provision in the plan with respect to choice is constitu-

tional in that it contemplates voluntary choice and has no reference to race. Therefore, any problems created by the difference in accomplishment levels and the adjustment to attending school with persons of the other race would not be as great as might be anticipated.

[3] It therefore seems, and the Court finds, that the following schedule for desegregation would be workable: the first through third grades in the school year 1963-64, the fourth through the sixth grade in the school year 1964-65 (as contemplated by the plan submitted); and the seventh and eighth in 1965-66, the ninth and tenth in 1966-67 and eleventh and twelfth in 1967-68. This schedule would contemplate the completion of the plan in five steps but actually within four years from the present date.

With respect to the grades which have been desegregated under this plan, the Board may adopt any admission or transfer plan as may in its judgment be reasonable or proper, provided, however, that no admission or transfer will be based upon race or have as its purpose the delay of desegregation as contemplated by the plan. It is not necessary otherwise to spell out the rights and duties of the Board in this regard.

The plan also must make it clear that any pupil who resides in a zone established under the plan and who is otherwise entitled under the plan to attend the school for that zone shall have a right to attend that school which is prior to the right of all other who do not live in that zone.

The Court believes that the Board should have administrative discretion in establishing unitary zones, provided that the zones do not clearly thwart the plan to bring about abolition of discrimination. The unitary zones for

elementary schools contemplated by the Board (Exhibit 6), the Court believes, do not constitute an abuse of this discretion and are therefore approved. A plan for unitary zones for the junior high system must be submitted by the Board not later than March 1, 1965 and a plan for the senior high schools must be submitted by the Board not later than March 1, 1966.

The plan should provide that pupils who do not live within the city will be admitted or assigned to schools in accordance with the discretion of the Board but, in doing so, no discrimination as to race will be made in admitting or assigning pupils to grades which have then been desegregated under this plan.

The Civil Technicians Class must under the plan, and as contemplated by the Board's plan, be desegregated in the 1963-64 school year. Moreover, the classes for the multiple handicapped and mentally retarded children must be desegregated in the 1963-64 school year if and so long as separate classes and facilities are maintained for these categories of pupils.

[4] An application has been made by plaintiffs for desegregation of teachers, principals and sustaining personnel. In Mapp v. Board of Education of Chattanooga, 319 F.2d 571 (C.A.6, 1963), it was held that Negro pupils and their parents cannot in a class action, as this is, assert the rights of Negro principals and teachers but that they can assert claim to desegregation of teachers and principals as part of their right to an abolition of discrimination in the public schools. This case also held that the pupils and parents have absolutely no right to assert a claim to desegregation of supporting personnel. The judg-

ment should provide that the claim to desegregation of teachers and principals will be held under advisement pending the implementation of the plan, and that the application for desegregation of supporting personnel be stricken.

The judgment should also provide that the Court will retain jurisdiction so long as necessary to effectuate the desegregation of the Jackson city school system as required by the Constitution of the United States.

Plaintiffs and defendant Board will each submit by August 15, 1963, a proposed draft of a judgment consistent with this memorandum decision.

Judgment

(Filed August 20, 1963)

This cause was heard the 26th and 27th days of July, 1963 before the Honorable Bailey Brown, United States District Judge, sitting without intervention of a jury, upon the entire record and especially upon the desegregation plan filed by the defendant, Board of Commissioners of the City of Jackson pursuant to summary judgment heretofore granted by the Court, upon the specifications of objection filed by the plaintiffs to said City desegregation plan, and the evidence introduced in open Court, and the Court makes the findings and holdings stated in its Memorandum Decision filed August 12, 1963 a part of the record, which Memorandum Decision is hereby adopted as the Court's Findings of Fact and Conclusions of Law.

IT IS, THEREFORE, ORDERED, ADJUDGED, DECREED AND ENJOINED as follows:

1. This is a proper class action of which the Court has jurisdiction under Title 28, United States Code, Sections 1331 and 1343, and Title 42, United States Code, Sections 1981 and 1983, filed by the plaintiffs, all Negroes, seeking desegregation of the public schools of the City of Jackson and Madison County, Tennessee. This judgment applies only to desegregation of the Jackson City schools.

2. Desegregation of the public schools of the City of Jackson, Tennessee will be effected by defendant City Board of Commissioners in accordance with the following schedule which the Court finds to be workable and which will complete desegregation of the schools within four years from the present date:

a) The first through third grades in the school year 1963-64;

b) The fourth through the sixth grades in the school year 1964-65;

c) The seventh and eighth grades in 1965-66;

d) The ninth and tenth grades in 1966-67;

e) The eleventh and twelfth grades in 1967-68.

3. With respect to the grades which have been desegregated under this plan the defendant Board of Commissioners may adopt any assignment, admission or transfer plan or policy as may in its judgment be reasonable or proper, provided, however, that no assignment, admission or transfer will be based upon race or have as its effect the delay of desegregation as contemplated by the plan.

4. Any pupil who resides in an attendance zone established under the plan and who is otherwise entitled under the plan to attend the school for that zone shall have a right to attend that school which is prior to the right of all others who do not live in that zone.

5. The unitary zones for elementary schools contemplated by said defendant Board shown on the map filed as Exhibit 6 are approved. The defendant Board of Commissioners will file with the Court a plan for unitary nonracial zones for the junior high school system not later than March 1, 1965, and for the senior high schools not later than March 1, 1966. The Board may make changes in the unitary zones from time to time, provided the zones are not based on race and do not have as their effect the delay of desegregation as contemplated by the plan.

6. Pupils who do not live within the City of Jackson will be admitted or assigned to schools in accordance with the discretion of the defendant Board of Commissioners but, in doing so, no discrimination as to race will be made in

admitting or assigning pupils to grades which have been desegregated under the plan.

7. As contemplated by the plan filed by defendant Board of Commissioners, the Civil Technicians Class will be desegregated in the 1963-64 school year. Also, the classes for the multiple handicapped and mentally retarded children will be desegregated in the 1963-64 school year if and so long as separate classes and facilities are maintained for those categories of pupils.

8. The claim of the plaintiffs for desegregation of teachers and principals procedurally may properly be asserted in this class action as a part of their claim to an abolition of racial discrimination in the public schools, but this claim will be and is held under advisement pending the implementation of the plan. The application of the plaintiffs for desegregation of supporting personnel is stricken.

9. All provisions of the desegregation plan filed in this case by the defendant City Board of Commissioners which are contrary to or inconsistent with this judgment are disapproved.

10. Jurisdiction is retained by this Court so long as necessary to effectuate the desegregation of the Jackson City School System as required by the Constitution of the United States.

/s/ BAILEY BROWN
United States District Judge

A TRUE COPY
ATTEST;
W. LLOYD JOHNSON, Clerk
By /s/ D. H. SAWYER, D.C.

Addendum to Memorandum Opinion

(Filed October 9, 1963)

Subsequent to the filing of the foregoing memorandum decision (in lieu of findings and conclusions) and the entry of a judgment based on the decision, the Jackson schools opened for the 1963-64 school year. Thereafter, plaintiffs filed a motion under Rule 60 for "appropriate relief." In this action, plaintiffs attacked the decision and judgment of the Court, and to this extent the motion was in effect a motion to amend findings and conclusions or for a new trial. Plaintiffs also, in their motion, contended that the defendant Board is not properly applying the plan as approved by the Court. A hearing has been held on the plaintiffs' motion, and this addendum to the original memorandum decision constitutes the Court's ruling on the motion.

Plaintiffs have misconstrued the ruling of the Court in one respect. Under the plan submitted by the defendant Board, pupils would be allowed to continue in the particular school they were attending in 1962-63 until they graduate from that school irrespective of the new unitary zones adopted under the plan. The Court intended to approve, and does approve, this provision so long as pupils who have a right to attend a school by virtue of residing in the new unitary zone of the shool would not thereby be deprived of their right to attend. In short, the Court saw good reason for allowing a pupil to continue in the school he has been attending and he should be allowed to do so provided pupils residing in the new unitary zone of the school have first choice to attend the school. This good reason is the obvious advantage of a continuation in familiar surroundings with the same teachers and fel-

low students. This provision will, of course, expire by its own terms in a relatively few years.

As heretofore stated, some Negro pupils have been attending "white" schools. The memorandum decision and judgment do not deal with their right to continue to do so. The defendant Board has taken the position that unless these pupils would be entitled to attend the "white" schools under the general provisions of the approved plan, they will be denied this right. Accordingly, the Board has required these Negro pupils to leave the heretofore "white" school system if, but only if, they, at the end of 1962-63 school year, graduated from the school they had been attending. While the overall plan approved by the Court meets, in the Court's opinion, the requirement of "all deliberate speed," at the same time the Court believes and so finds that it should be a part of the plan that Negro pupils already attending school in the "white" school system be allowed to continue to do so.

Plaintiffs seek to have set aside the approval by the Court of the unitary zones for grades one through six as proposed by the defendant Board on the ground that, plaintiffs claim, these zones are gerrymandered to effect a perpetuation of segregation. As heretofore indicated, the Court believes that the school Board should be allowed considerable discretion in establishing unitary zones for attendance and that the action of the Board should not be overridden unless it constitutes a clear abuse of this discretion. Certainly this Court would be entering an administrative thicket if it sought to divide the city into zones and should do so only when the need for such action is clear and plain. The Court does not believe, from the evidence adduced at the trial, that establishment of these zones does constitute an abuse of discretion.

Addendum to Memorandum Opinion

The plaintiffs make more basic attacks on these unitary zones. The proof shows that the residences of the Negroes in Jackson are in substantial part concentrated in certain areas with the result that *de facto* segregation in the school system will be promoted by a geographical zoning system even if it is not gerrymandered. From this the plaintiffs argue that the unitary zones based on residence do not comply with the requirements of the Constitution. First they argue that the School Segregation Cases require integration of white and Negro pupils rather than an abolition of compulsory segregation based on race. Secondly they argue that, even if the School Segregation Cases require only an abolition of discrimination, a right to attend schools based on residence zones is in substance a right to attend based on race.

Plaintiffs make these same attacks on the provision in the plan whereby pupils are allowed, within the limitation heretofore described, to continue in the particular school now attended until graduation. This, plaintiffs argue, promotes *de facto* segregation, and therefore runs counter to the claimed mandate of the School Segregation Cases to effect integration. Plaintiffs also argue that this provision amounts to a recognition of racial factors with respect to admissions and transfers in view of the prior history of the operation in Jackson of segregated schools.

With respect to the contention that the Law requires more than an abolition of compulsory segregation based on race and that it sets up an affirmative duty to bring about integration, this Court heretofore had occasion to point out in the Obion County, Tennessee, school case, *Vick* v. *County Board of Education of Obion County*, 205 F.Supp. 436, 7 R. Rel. Rep. 380 (WD Tenn. 1962) that the language of the Supreme Court in the leading case of

Brown v. *Board of Education*, 347 U.S. 483 (1954), and 349 U.S. 294 (1955), and *Cooper* v. *Aaron*, 358 U.S. 1 (1958) does not support this contention.

It can, of course, be argued that the decision of the Supreme Court in the *Brown* case is based primarily on a finding that separate facilities for the two races cannot be equal because of the adverse psychological and sociological effect of such segregation on the children. See Blaustein & Ferguson, *Desegregation and the Law* (Vintage, 2d Rev. Ed. 1962), Chapters 9 and 10. From this it can be argued that even if *de facto* racial segregation results from voluntary choice or from consideration of factors other than race, the law requires that it be ended in order to bring about equality of educational opportunity. (It should be pointed out, in passing, that the view that the Supreme Court's decision is based on findings of fact also can plausibly support the argument that in each school desegregation case a separate inquiry must be made as to the effect of segregation on school children in that community. This was the holding in the case of *Stell, et al.* v. *Savannah-Chatham County Board of Educaiton, et al.*, —— F.Supp. —— (SD Ga., June 28, 1963), which decision appears to have been reversed. —— F.2d —— (CA 5, May 24, 1963).) However, even conceding that the Supreme Court's decision in the *Brown* case is primarily based on such a finding of fact, the finding of fact was not that segregation *per se* has a detrimental effect on children but rather the finding was that *compulsory segregation based on race* has such an effect. Moreover, even if the Supreme Court did reach the conclusion, based on the record, that racial segregation did *per se* have this adverse effect on the children, it is difficult to see how it could have declared all racial segregation in the schools

unconstitutional because presumably voluntary segregation cannot be said to result from "state action." Accordingly, it does not follow that the Supreme Court's decision in the *Brown* case commands integration rather than an abolition of compulsory segregation based on race even if it be considered to be grounded primarily on a finding of fact.

There remains to be dealt with the argument of plaintiffs to the effect that in the factual context here existing the admission of children into schools according to their residence locations and allowing them to continue in the particular school heretofore attended until graduation amounts to compulsory segregation because of race or in any event amounts to a consideration of racial factors in admissions and transfers.

There is nothing in the *Brown* decision or in other Supreme Court decisions in this field or in the decisions of the Court of Appeals for this Circuit which indicates that school attendance cannot be based on neighborhood zoning. In one case (*Northcross, et al.* v. *Board of Education of the Memphis City Schools, et al.*, 302 F.2d 818 (CA 6, 1962), cert. den. 370 U.S. 944 (1962)) our Court of Appeals said at page 823:

> "Minimal requirements for non-racial schools are geographic zoning, according to the capacity and facilities of the buildings and admission to a school according to residence as a matter of right."

If Negro residences tend to be concentrated in certain areas because of illegal pressure or compulsion, certainly the remedy for this is not to upset the system of neighborhood public schools.

Addendum to Memorandum Opinion

The holding in the case of *Goss* v. *Board of Education of Knoxville* and *Maxwell* v. *County Board of Education of Davidson County, Tennessee,* —— U.S. —— (June 3, 1963) does not support plaintiffs' contention that allowing pupils to continue in their particular schools until graduation is an unconstitutional consideration of racial factors in the admission and transfer of pupils. This Court approved this provision in the plan, as amended by this Court, for good reasons, herein indicated, having nothing to do with race. This provision applies equally to white and Negro pupils, contemplates a voluntary decision on the part of pupils and parents involved, and applies regardless of the racial composition of the school in which a pupil would continue until graduation.

Concurrently with the filing of this addendum the Court is entering an order on plaintiffs' motion under Rule 60.

/s/ Bailey Brown
United States District Judge

A True Copy
Attest:
W. Lloyd Johnson, Clerk
By /s/ D. H. Sawyer, D.C.

Motion for Further Relief and to Add Parties as Additional and/or Intervening Plaintiffs

Filed September 4, 1964.

[Caption Omitted]

Come the original plaintiffs in the above entitled case and respectfully move the Court to grant them further relief against the defendants, Board of Commissioners of the City of Jackson, Tennessee, its Board Members and C. J. Huckaba, Superintendent of City Schools, and to add and/or permit to intervene as additional and/or intervening plaintiffs in said case, the following: Portia P. Porter, an infant, by her father and next friend, Albert J. Porter; Garland Lyons, an infant, by his mother and next friend, Mrs. Annie L. Lyons; Willie Roy Sorrells, Jr., James Willie Sorrells, and Jesse D. Ruffin, infants, by their mother and next friend, Mrs. Ida Mae Sorrells; Carmen Golden, an infant, by her mother and next friend, Mrs. Ernest Golden; Kathey Robinson and Norvell L. Robinson, infants, by their mother and next friend, Mrs. Mary Robinson; Joyce Ledbetter, Willie Ledbetter and Debbie Ledbetter, infants, by their mother and next friend, Mrs. Glyn A. Ledbetter; Craig Oneal Davis, Bobbie Davis, Kathy Davis, and Ernest W. Davis, infants, by their grandmother and next friend, Mrs. Bobbie Glenn; Curtis S. White and Terry Wayne, infants, by their mother and next friend, Mrs. Stella White; Valerie Elizabeth Fisher and Theda Bara Fisher, infants, by their mother and next friend, Mrs. Christiana Jones Fisher; Melvin Harris, infant, by his mother and next friend, Mrs. Melvin Harris; Moneda Merriwether, infant, by her mother and next

friend, Mrs. Booker T. Merriwether; Gwendolyn F. Davis, infant, by her father and next friend, Thomas B. Davis; Barbara Ann Morrow and Terry Lee Morrow, infants, by their mother and next friend, Mrs. Freddie Moore; Carlin Anita Brown, infant, by her mother and next friend, Mrs. Carl Brown; Myrtle Faye Gooch, infant, by her mother and next friend, Mrs. Alice Gooch; Emma Merriweather, infant, by her mother and next friend, Mrs. Annie L. Merriweather; and Albert J. Porter, Mrs. Annie L. Lyons, Mrs. Ida Mae Sorrells, Mrs. Ernest Golden, Mrs. Mary Robinson, Mrs. Glyn A. Ledbetter, Mrs. Bobbie Glenn, Mrs. Stella White, Mrs. Christina Jones Fisher, Mrs. Melvin Harris, Mrs. Booker T. Merriwether, Thomas B. Davis, Mrs. Freddie Moore, Mrs. Carl Brown, Mrs. Alice Gooch, and Mrs. Annie L. Merriweather, individually, all of whom also pray for said further relief against said defendants on the grounds and for the reasons hereinafter stated:

On 20 August 1963, this Court entered a judgment in this action requiring desegregation of the public schools of the City of Jackson, Tennessee, by the above defendants within four years encompassing the first three grades in the school year 1963-64, the next three grades in 1964-65, and two grades successively each school year thereafter until completed. Said judgment provided, in part:

> "With respect to the grades which have been desegregated under this plan the defendant Board of Commissioners may adopt any assignment, admission or transfer plan or policy as may in its judgment be reasonable or proper, provided, however, that no assignment, admission or transfer will be based upon

race or have as its effect the delay of desegregation as contemplated by the plan."

"Any pupil who resides in an attendance zone established under the plan and who is otherwise entitled under the plan to attend the school for that zone shall have a right to attend that school which is prior to the right of all others who do not live in that zone.

"The unitary zones for elementary schools contemplated by said defendant Board shown on the map filed as Exhibit 6 are approved. . . . The Board may make changes in the unitary zones from time to time, provided the zones are not based on race and do not have as their effect the delay of desegregation as contemplated by the plan.

"The claim of the plaintiffs for desegregation of teachers and principals procedurally may properly be asserted in this class action as a part of their claim to an abolition of racial discrimination in the public schools, but this claim will be and is held under advisement pending the implementation of the plan."

Said Court-approved school zone lines established by defendants were drawn artificially along the margins of dominantly Negro and white residential areas, so as to take maximum advantage of said residential segregation and to send Negro children great distances and across railroad tracks, busy traffic centers, and other dangerous obstacles to be assigned and attend formerly Negro schools and deny them admission to formerly white schools in their immediate neighborhoods where white children, both

in and out of such neighborhoods, were and are permitted freely to register and attend. This racial gerrymandering was especially apparent in the zones established for the formerly Negro South Jackson, Lincoln, and Washington-Douglass Elementary Schools, and the formerly white Alexander, Whitehall and Parkview Elementary Schools.

Thereafter said defendants adopted and made public an admission and transfer plan or policy providing that as grades were desegregated students might attend the proper desegregated school in their respective zones and further, that any student enrolled in a city school for the 1962-63 school year may continue to attend the same school until graduation from or completion from such school, regardless of zone lines.

Said plan or policy further provided that new city students entering the city schools for the first time in a desegregated grade "may register at the school of their choice even though such school may be outside the district area in which said student lives," subject to an option given to the superintendent to re-assign such students on the basis of said school zones.

Said defendants continued and still continue to maintain complete faculty segregation assigning all Negro faculties to formerly Negro schools and all white faculties to formerly white schools.

In the 1963-64 school year a total of approximately 40 Negro students attended a total of approximately 5 formerly white schools either because of assignment thereto prior to the Court's decree of 20 August 1963 or because of residence within the predominantly white zones established for said schools. Although many white students, both new and old, resided within the dominantly Negro

zones for the formerly Negro schools all of these white students registered in and were permitted by defendants to attend formerly white schools outside their zones, because they were white persons. As a result all formerly Negro schools remain totally "Negro" as to both faculty and student assignment. The intervening or additional infant plaintiff, Myrtle Faye Gooch, who like all the other intervening or additional plaintiffs is a Negro, registered as a new student in the first grade at formerly white Alexander School, being the school of her choice and the one nearest her residence, but defendants removed her therefrom and reassigned her to the all-Negro and greatly distant South Jackson school according to said gerrymandered zone lines. (See affidavit of Mrs. Alice Gooch, attached hereto, marked "Exhibit A")

At the beginning of the 1964-65 school year there were many new white and Negro students entering the Jackson City Schools either as first graders or as new residents entering other desegregated grades, all of whom reside in zones of formerly Negro schools. All such white children registered and were assigned by defendants instead to formerly white schools outside these "Negro" zones. But all or nearly all of such Negro children residing in the same neighborhoods and school zones as said white children, who registered or sought to register in formerly white schools outside their zones, were removed by defendants and reassigned to the Negro schools, solely because of their race or color. These re-assignments were effected by letters received from Superintendent C. J. Huckaba on Saturday, 29 August 1964, just two days before the opening of school on Monday, 31 August 1964 and over ten days after they had registered in said formerly white

schools on or about 18 or 19 August 1964. Included in this group are the intervening or additional infant plaintiffs, Portia P. Porter, who registered in formerly white Whitehall School and was re-assigned to Negro Lincoln School, Garand Lyons, who registered in formerly white Parkview School and was re-assigned to Negro Washington-Douglass School, and Joyce Ledbetter, Craig Oneal Davis, Barbara Ann Morrow, Curtis White, Kathey Robinson, Willie Roy Sorrells, Jr., James Willie Sorrells, and Jesse D. Ruffin, all of whom registered in formerly white Alexander School and were re-assigned to Negro South Jackson School (See joint affidavit of Albert J. Porter, Mrs. Annie L. Lyons, Mrs. Glyn Ann Ledbetter, Mrs. Bobbie Glenn, Mrs. Freddie Moore, Mrs. Stella White and Mrs. Mary Robinson, attached hereto, marked "Exhibit B," and affidavit of Mrs. Ida Mae Sorrells, attached hereto, marked "Exhibit C")

Also at the beginning of the 1964-65 school year there were many white and Negro students in the second grade who were not enrolled in the city schools during the 1962-63 school year, residing in the Negro school zones, and not covered by the 1962-63 enrollment option of defendants' plan or policy. All of these white children, instead of registering in the formerly Negro schools for which they were zoned, instead registered and were assigned and accepted by defendants, in formerly white schools. All such Negro children, however, were assigned by defendants and required to remain in the Negro schools for which they were zoned, or to attend some Negro school outside their zone. Included in this group is the intervening or additional infant plaintiff, Bobbie Davis, who registered in the second grade at formerly white Alexander

School on 19 August 1964, same being nearest his residence and the school of his choice, and was removed therefrom and re-assigned by defendants on 19 August 1964 either to the Negro South Jackson School for which he was zoned or the Negro elementary school which defendants allowed him to choose for attendance last year, although outside his zone, because it was a Negro school. Defendants permit free choice of assignments and transfers out of zone by Negro students to formerly Negro schools and by white students to formerly white schools regardless of zone lines, but deny all requests for assignment or transfer of Negro students to formerly white schools when they do not reside within the zones of those schools. (See affidavit of Mrs. Bobbie Glenn, attached hereto, marked "Exhibit B")

A number of Negro students who reside in immediate proximity to formerly white Alexander, Whitehall and Parkview Schools, but, by gerrymandering, have been placed in the extreme ends of defendants' zones for the Negro South Jackson, Lincoln and Washington-Douglass Schools, because of financial hardship in providing transportation to these distant Negro schools or the extremely dangerous traffic and other hazards involved in walking to them, registered their children in said formerly white schools on 19 August 1964. Ten days later, on 29 August 1964, just before the opening of school, defendants, by written notification received 29 August 1964, removed these children from said schools and assigned them to all Negro schools, in some instances the schools for which they were zoned and in other instances either the school for which they were zoned or the school they attended last year. Included in the former group are the inter-

vening or additional plaintiffs, Valerie Elizabeth Fisher, Theda Bara Fisher, Melvin Harris and Moneda Merriwether, who registered in formerly white Whitehall School and were re-assigned to all-Negro Lincoln School, Gwendolyn F. Davis, who registered in formerly white Parkview School and was re-assigned to all-Negro Washington-Douglass School, and Terry Lee Morrow, Carlin Anita Brown, Myrtle Faye Gooch, and Emma Merriweather, all of whom registered in formerly white Alexander School and were re-assigned to all-Negro South Jackson School. Included in the latter group were the intervening or additional plaintiffs, Carmen Golden, who registered in formerly white Alexander School and was re-assigned to either all-Negro South Jackson School for which she was zoned or previously attended all-Negro Washington-Douglass School, and Norvell L. Robinson, Willie Ledbetter, Debbie Ledbetter, Kathy Davis, Ernest W. Davis, and Terry Wayne, all of whom registered in formerly white Alexander School, but were either re-assigned to all-Negro South Jackson School, for which they were zoned, or the previously attended all-Negro Lincoln School. These Negro students would not have been removed from or re-assigned from said white schools to said Negro schools if they had been white persons for, as aforesaid, registration of a white child in a formerly white school is tantamount to assignment where such child resides in the zone of a formerly Negro school. Defendants apply zone lines or other admission or transfer restrictions only for and with the purpose and effect of preserving racial segregation in the schools. (See Affidavits of Mrs. Alice Gooch, Mrs. Bobbie Glenn, Mrs. Ernest Golden, Mrs. Mary Robinson, Mrs. Glyn A. Ledbetter, Mrs. Christiana Jones

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Fisher, Mrs. Melvin Harris, Mrs. Booker T. Merriwether, Thomas B. Davis, Mrs. Freddie Moore, Mrs. Carl Brown, and Mrs. Annie L. Merriweather, attached hereto, respectively marked Exhibits A, and D to N, inclusive.)

Defendants have operated and are operating their so-called admission or transfer plan or policy so that, regardless of zone lines, all white students are permitted to register in formerly white schools of their choice and all Negro students are permitted to register in formerly Negro schools of their choice. Such registration is tantamount to assignment unless defendants decide to "assign" the student to another school. Defendants "assign" students to another school in such case only when such an assignment will remove a Negro student from a formerly white school or prevent a white student from being required to attend a formerly Negro school. Defendants "assign" Negro students to formerly Negro schools and require them to attend on the basis of school zone lines, but they have never "assigned" any white student or students or required any such student or students to attend a formerly Negro school, on the basis of zone lines, or for any other reason, although there are many white students residing within said dominantly Negro zones. Nor have defendants ever "assigned" or required a single Negro student or students to attend a formerly white school, on the basis of zone lines, although there are some living within said dominantly white zones.

Negro students are allowed to attend formerly white schools only when they insist upon it and reside within the zones of these schools. The zone lines are therefore used by defendants solely to restrict the number of Negro students who may elect to attend formerly white schools. Defendants further discourage any voluntary choice of

formerly white or formerly Negro schools by students of the opposite race, through the continued maintenance of segregated white and Negro faculties therein. As a result of said racially "one-way" admission or transfer system the Negro schools remain completely segregated and the white schools substantially segregated on a racial basis, although desegregation is now supposedly in effect under the Court's decree for the second school year and in six grades.

Plaintiffs aver that said admission and/or transfer plan or policy adopted and pursued by said defendants is based solely on race, hinders and delays desegregation, perpetuates segregation and violates their rights and those of the class they represent, including the intervening or additional plaintiffs herein sought to be joined, to a racially nondiscriminatory school system in and for the City of Jackson, Tennessee, in violation of the Fourteenth Amendment to the Constitution of the United States and is therefore unconstitutional and void.

Plaintiffs further aver that said defendant's said racially discriminatory manner of operating said admission and/or transfer plan or policy in such a way as to lead towards continued racial segregation violates said constitutional rights of plaintiffs and the class they represent, including said intervening and/or additional plaintiffs, and is therefore unconstitutional and void.

Plaintiffs further aver that said admission and/or transfer plan or policy and system as operated by said defendants in conjunction with said racially gerrymandered school zones and the continued maintenance of racially segregated faculty assignment, has the necessary purpose and effect, and has resulted, in the continued maintenance

and operation of substantially segregated schools and, in particular, continued complete segregation as to both faculty and students in all formerly Negro schools, which remain all-Negro, and which plaintiffs and those they represent, including said intervening or additional plaintiffs, are required to attend, while no white child residing within the zone of these schools is required to attend same. Plaintiffs, and the class they represent, including the additional and/or intervening plaintiffs, are thereby deprived of and denied their rights secured by the Fourteenth Amendment to the Constitution of the United States, and all of said actions of defendants are therefore unconstitutional and void.

Plaintiffs aver that this action was sustained as a class action, that all of the intervening and/or additional plaintiffs first named hereinabove are members of the class for whom the suit was brought and assert the same constitutional rights asserted by the original plaintiffs and claim entitlement to further relief under and by virtue of the Judgment entered by the Court in this cause for their benefit. Plaintiffs further aver that immediate relief is required for the reason that if the intervening and/or additional plaintiffs accede to defendants' above mentioned actions assigning them on the ground of race or color to said respective all-Negro schools, defendants may claim that they have in effect acquiesced in said unconstitutional assignments and are required to seek transfer and/or reassignment under the Pupil Assignment Law contrary to the Fourteenth Amendment and to the Judgment of this Court prohibiting any admission or transfer plan based on race or having as its effect the delay of desegregation as contemplated by the plan. For this reason some of

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the intervening or additional plaintiffs have remained out of said Negro schools and are standing on their rights to attend the formerly white schools for which they registered on a nonracial basis. In view of the foregoing the representation of the interests of the intervening or additional plaintiffs by the original plaintiffs is or may be inadequate, although they will be bound by the Court's judgment herein. In addition their claim to enjoyment of a racially nondiscriminatory school system and for further relief herein is based on the same questions of law and facts, as hereinabove set out, upon which the original plaintiffs rely, and they hereby adopt and rely upon not only these facts but the original complaint and all other pleadings heretofore filed by the original plaintiffs in this case.

Plaintiffs pray that the Affidavits attached hereto marked "Exhibits A to N" inclusive be treated as incorporated herein and made a part of this motion.

WHEREFORE, PREMISES CONSIDERED, plaintiffs move the Court and pray:

1. That this motion be filed and that the said intervening and/or additional plaintiffs, Portia P. Porter, Garland Lyons, Willie Roy Sorrells, Jr., James Willie Sorrells, Jesse D. Ruffin, Carmen Golden, Kathey Robinson, Norvell L. Robinson, Joyce Ledbetter, Willie Ledbetter, Debbie Ledbetter, Craig Oneal Davis, Bobbie Davis, Kathy Davis, Ernest W. Davis, Curtis S. White, Terry Wayne, Valerie Elizabeth Fisher, Theda Bara Fisher, Melvin Harris, Moneda Merriwether, Gwendolyn F. Davis, Barbara Ann Morrow, Terry Lee Morrow, Carlin Anita Brown, Myrtle Faye Gooch, Emma Merriweather, Albert J. Porter, Mrs.

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Annie L. Lyons, Mrs. Ida Mae Sorrells, Mrs. Ernest Golden, Mrs. Mary Robinson, Mrs. Glyn A. Ledbetter, Mrs. Bobbie Glenn, Mrs. Stella White, Mrs. Christiana Jones Fisher, Mrs. Melvin Harris, Mrs. Booker T. Merriwether, Thomas B. Davis, Mrs. Freddie Moore, Mrs. Carl Brown, Mrs. Alice Gooch and Mrs. Annie L. Merriweather, be added or allowed to intervene as plaintiffs in this cause under Rule 21 and/or Rule 24 of the Federal Rules of Civil Procedure, and pursuant to the Judgments of the Court previously entered in the case; and that, if deemed necessary or applicable, this motion be treated as the pleading required by Subparagraph (c) of said Rule 24.

2. That the defendant, Board of Commissioners of the City of Jackson, Tennessee, its Board Members, and C. J. Huckaba, Superintendent of the City Schools of Jackson, their successors, agents and employees, be permanently enjoined from assigning, re-assigning, transferring or otherwise requiring said additional or intervening plaintiffs named hereinabove or any other students, similarly situated, to attend any school or schools in the Jackson City School System other than the respective formerly white schools in which they registered and sought to attend as set out hereinabove in this Motion, and that said defendants be required to admit them respectively to said Alexander, Whitehall and Parkview Elementary Schools in which they respectively registered or sought to register.

3. That said defendants be permanently enjoined from continuing to operate, apply and/or enforce against any of the plaintiffs, or any other students, similarly situated, said racially discriminatory admission or transfer plan

or policy, basing assignments, re-assignments, transfers or any other conditions of school enrollment on the race of the student, the race or racial proportion or character of other students in the neighborhood, school zone or school, the race or racial proportion or character of the school faculty, the previous or present racial designation or character of the school, or any other racial factor; and further enjoining said defendants enforcing said racial school zone lines, or from making any distinction whatsoever based upon race in making or administering student assignments, reassignments or transfers in the desegregated grades in said school system.

4. That defendants be required to prepare and file with the Court within a reasonable time a new zoning plan for all of the schools of Jackson, Tennessee, which shall not be racially gerrymandered or designed to perpetuate or preserve segregation in the schools in said school system, and which shall follow natural topographical boundaries and establish geographical zones according to the capacities of the school buildings and residential proximity to the schools rather than the racial character of the zones.

5. That as now shown to be an essential for proper implementation of the desegregation plan approved by the Court, and of plaintiffs' constitutional rights, the defendants be permanently enjoined from assigning, employing or treating or dealing with teachers and principals in the City Schools on the basis of the race of the teacher or principal and/or of the students assigned or to be assigned, or on the basis of the previous or present racial character or designation of any school or on any basis whatsoever predicated on race.

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6. That the Court award reasonable fees to plaintiffs' attorneys for their services rendered to them, including the intervening and/or additional plaintiffs, in this cause, and allow plaintiffs their reasonable costs and grant such further, other, additional or alternative relief as may appear to the Court to be equitable and just.

Z. Alexander Looby
Avon N. Williams, Jr.
327 Charlotte Avenue
Nashville, Tennessee 37201

J. Emmett Ballard
116 West Lafayette
Jackson, Tennessee

Jack Greenberg
Constance Baker Motley
James M. Nabrit, III
10 Columbus Circle, Suite 2030
New York, New York 10019

By /s/ Avon N. Williams, Jr.
Avon N. Williams, Jr.

/s/ J. Emmett Ballard
Emmett Ballard

Attorneys for original Plaintiffs and for intervening and/or additional Plaintiffs

Motion for Further Relief and to Add Parties as Additional and/or Intervening Plaintiffs

NOTICE TO DEFENDANTS:

Take notice that we shall bring the foregoing Motion for Further Relief and To Add Parties as Additional and/or Intervening Plaintiffs on for hearing before the Honorable Bailey Brown, United States District Judge, in his Courtroom in the United States Courthouse at Memphis, Tennessee on Friday, 11 September 1964 at 10:00 A. M. or as soon thereafter as same may be reached upon the docket of said Court.

This 3rd day of September, 1964.

/s/ AVON N. WILLIAMS, JR.
AVON N. WILLIAMS, JR.
One of the Attorneys for original Plaintiffs and for intervening and/or additional Plaintiffs.

Exhibit "K" Annexed to Foregoing Motion

(Affidavit of Thomas B. Davis)

STATE OF TENNESSEE
COUNTY OF MADISON

Thomas B. Davis, after being duly sworn according to law, deposes and says:

That he is and has been for several years a resident of Madison County, Tennessee, residing at 233 First Street, Jackson, Tennessee, and is the father of Gwendolyn F. Davis, age 10, who is a student in the sixth grade enrolled in the public schools of Jackson, Tennessee. That in the past Gwendolyn has been assigned to Washington-Douglass Elementary School, a formerly Negro School. That in order to reach said School, deponent's said child must traverse a dangerous area consisting of a junkyard, railroad tracks and other obstacles constituting a hazard and in addition said school is approximately eight blocks from his residence, while Parkview Elementary School, a formerly white school, is only approximately three blocks from his residence and entails none of these hazards enroute to school. This year Gwendolyn is covered by the City desegregation plan, but instead of being zoned in the school closest to her residence, Parkview, she is zoned for Washington-Douglass School. Because of said hazards and hardships, deponent presented and registered her at Parkview School on or about 19 August 1964. On 29 August 1964, just two days before the opening of school on Monday, 31 August 1964, deponent received a written communication from C. J. Huckaba, Jackson City School Superintendent, reassigning his said child to Washington-Douglass School. Deponent avers that no white child, either in the first grade or otherwise, residing in the zone

Exhibit "K" Annexed to Foregoing Motion

of any formerly Negro School in the City of Jackson has been refused registration in some white school outside the zone of said Negro Schools. All Negro Schools in the City of Jackson remain Negro in all respects. Deponent therefore avers that said refusal to admit his child to Parkview Elementary School unlawfully discriminated against his child because of her race or color and was done because of her race or color. He avers that approximately nine Negro children sought registration at Parkview, including his said child, and that only one of said Negro children was permitted to attend there whereas all white children in similar circumstances were admitted to this and other white schools, as aforesaid, without exception.

Further deponent saith not.

SIGNED: /s/ THOMAS B. DAVIS

Sworn to and subscribed before me
this 2d day of September, 1964.

/s/ J. EMMETT BALLARD
Notary Public
My Commission Expires: 4-18-67

(SEAL)

Exhibit "L" Annexed to Foregoing Affidavit

(Affidavit of Mrs. Freddie Moore)

STATE OF TENNESSEE
COUNTY OF MADISON

Mrs. Freddie Moore, after being duly sworn according to law, deposes and says:

That she is and has been for several years a resident of Madison County, Tennessee, residing at 118 Elm Street, Jackson, Tennessee, and is the mother of Terry Lee Morrow, age 12, who is enrolled in the sixth grade of the public schools of Jackson, Tennessee. That when said school system was desegregated said child was attending South Jackson Elementary School, being the Negro School to which he was assigned. This year he is covered by the desegregation plan and, although zoned for South Jackson School deponent, on 19 August 1964 presented and registered him at Alexander Elementary School, a formerly white school which is only approximately five blocks from her residence and in the same neighborhood, while South Jackson Elementary School is all the way accross town, many blocks away requiring said child walking to school to traverse many busy and dangerous street and railroad crossings and other hazards. That on or about 29 August 1964, approximately two days' before the opening of school on Monday, 31 August 1964, deponent received a letter from C. J. Huckaba, Jackson City Superintendent of Schools, advising her that her said child was assigned to South Jackson School. Deponent was not therein advised as to the reason for said assignment. Deponent avers that no white child, either in the first grade or otherwise, residing in the zone or neighborhood of any formerly Negro School in the City of Jackson has

Exhibit "L" Annexed to Foregoing Motion

been refused registration in some white school outside the zone of said Negro Schools. All Negro Schools in the City of Jackson remain Negro in all respects. Deponent therefore avers that said refusal to admit her child to Alexander Elementary School unlawfully discriminated against her child because of her race or color and was done because of her race or color. That to the best of deponent's knowledge, all white children who sought admission to formerly white schools under such circumstances were admitted.

Further deponent saith not.

SIGNED: /s/ MRS. FREDDIE MOORE

Sworn to and subscribed before me
this 1st day of September, 1964.

/s/ J. EMMETT BALLARD
Notary Public
My Commission Expires: 4-18-64

(SEAL)

Exhibit "M" Annexed to Foregoing Motion

(Affidavit of Mrs. Carl Brown)

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Mrs. Carl Brown, after being duly sworn according to law, deposes and says:

That she is and has been for several years a resident of Madison County, Tennessee, residing at 134 Prince Edward Street, Jackson, Tennessee, and is the mother of Carlin Anita Brown, age 8, who is enrolled in the third grade of the public schools of Jackson, Tennessee. That when said school system was desegregated said child was attending South Jackson Elementary School, being the Negro School to which she was assigned. This year she is covered by the desegregation plan and, although zoned for South Jackson School deponent, on 19 August 1964 presented and registered her at Alexander Elementary School, a formerly white school which is only approximately five blocks from her residence and in the same neighborhood, while South Jackson Elementary School is all the way across town, many blocks away, requiring said child walking to school to traverse many busy and dangerous street and railroad crossings and other hazards. That on or about 29 August 1964, approximately two days before the opening of school on Monday, 31 August 1964, deponent received a letter from C. J. Huckaba, Jackson City Superintendent of Schools, advising her that her said child was assigned to South Jackson School. Deponent was not therein advised as to the reason for said assignment. Deponent avers that no white child, either in the first grade or otherwise, residing in the zone or neighborhood of any formerly

Exhibit "M" Annexed to Foregoing Motion

Negro School in the City of Jackson has been refused registration in some white school outside the zone of said Negro Schools. All Negro Schools in the City of Jackson remain Negro in all respects. Deponent therefore avers that said refusal to admit her child to Alexander Elementary School unlawfully discriminated against her child because of her race or color and was done because of her race or color. That to the best of deponent's knowledge, all white children who sought admission to formerly white schools in said school system under such circumstances were admitted.

Further deponent saith not.

SIGNED: /s/ MRS. CARL BROWN

Sworn to and subscribed before me
this 1st day of September, 1964.

/s/ J. EMMETT BALLARD
Notary Public
My Commission Expires: 4-18-67

(SEAL)

Exhibit "N" Annexed to Foregoing Motion

(Affidavit of Mrs. Annie L. Merriweather)

STATE OF TENNESSEE
COUNTY OF MADISON

Mrs. Annie L. Merriweather, after being duly sworn according to law, deposes and says:

That she is and has been for some years a resident of Madison County, Tennessee, residing at 331 Lane Avenue, Jackson, Tennessee, and is the mother of Michael L. Merriweather, age 8, grade 3, and Emma Merriweather, age 10, grade 5, who are enrolled in the public schools of Jackson, Tennessee. That she and her children returned to Jackson in May, 1963, from a tour of overseas duty with her husband, who was in the Armed Forces. That she resides approximately two blocks from Alexander Elementary School, which is easily accessible and in her immediate neighborhood, while Lincoln Elementary School is approximately seven blocks away and requires the crossing of a dangerous railroad crossing. Accordingly, in June, 1963, she sought to register both of her said children in Alexander Elementary School. Michael was accepted but Emma was denied admission by the school authorities on the ground that, being in the fourth grade, she must attend a segregated school. Thereupon deponent enrolled Emma in Washington-Douglass Elementary School, a Negro school, because she could obtain a ride to that school with a friend. In August, 1964, on the appropriate day, deponent again presented both Michael and Emma at Alexander Elementary School and registered them there. On or about 29 August 1964, two days before the opening of school, on Monday, 31 August 1964, deponent received a letter from C. J. Huckaba, Jackson City Superintendent

Exhibit "N" Annexed to Foregoing Motion

of Schools, advising her that Michael was assigned to Alexander Elementary School, but that Emma, who is now covered by the desegregation plan, was nevertheless refused assignment there and was assigned to Lincoln Elementary School. No reason was given for said assignment of Emma to Lincoln School. Deponent avers that no white child, either in the first grade or otherwise, residing in the zone or neighborhood of any formerly Negro school in the City of Jackson has been refused registration in some white school outside the zone of said Negro schools, to the best of her knowledge and belief. All Negro schools in the City of Jackson remain Negro in all respects. Deponent, therefore, avers that said refusal to admit her said child to Alexander Elementary School unlawfully discriminated against her said child, Emma Merriweather, who was so refused admission, and was done because of her race or color. That to the best of deponent's knowledge, all white children who sought admission to formerly white schools in said school system under such circumstances were admitted.

Further deponent saith not.

SIGNED: /s/ MRS. ANNIE L. MERRIWEATHER

Subscribed and sworn to before me
this 1st day of September, 1964.

/s/ J. EMMETT BALLARD
Notary Public
My Commission Expires April 18, 1967.

(SEAL)

Replication of Defendants to "Motion for Further Relief"

Filed September 14, 1964

[Caption Omitted]

First Defense

All questions presented in said motion directed to the legality of the Desegregation Plan and Districting Plan of The City of Jackson have been fully ajudicated by this Court after regular hearing and are now res ajudicata. This is the second such motion filed by Plaintiffs seeking in this fashion to reopen an ajudicated question. Plaintiffs perfected an appeal on these questions to the Sixth Circuit Court of Appeals and then withdrew such appeal prior to hearing. Plaintiffs have therefore had every legal remedy available to them to question such plans and have allowed them to expire. Since there must be an end somewhere to all litigation, such portions of plaintiff's motion directed to the City of Jackson Desegregation Plan and Zoning Plan should be stricken from this proceeding and Defendants so move.

Second Defense

Pursuant to the order of this Court approving a Desegregation Plan for the school system of the City of Jackson, the Board of Commissioners of the City of Jackson adopted a transfer plan as submitted to this Court with its plan of desegregation.

Defendants would show unto the Court that the provisions of the Tennessee Pupil Assignment Law TCA 49-1748 et seq. relating to transfer are as follows:

Replication of Defendants to "Motion for Further Relief"

"*49-1748. Dissatisfaction with assignment—Application for hearing on transfer.*—Both parents, if living, or the parent, guardian or legal custodian of any child so assigned who is dissatisfied with the assignment of such child may, within ten (10) days of the order making said assignment, make written application to the board for a hearing before the board as to the reasonableness of said assignment and asking for a transfer to another school. Said application for transfer shall state the specific reasons why the applicant contends that the child should not attend the school assigned and the specific reasons why the child should be assigned to the different school named in the application. Upon the receipt of such application for hearing, the board shall set a date for the hearing of the protest and such hearing shall be held within a reasonable time after receipt of the written application for the hearing. Written notice of the date and place of the hearing shall be given by the board or its secretary to the parents, guardian or legal custodian of such child by mailing a notice of hearing to said party at his last known mailing address at least ten (10) days before the date of the hearing. The applicant shall be entitled to appear in his own behalf or to be represented by counsel upon the hearing of such protest.

"*49-1749. Decision of board on protest—Written order.*—The board shall consider and decide each individual case separately on its merits; and its decision shall be based upon a consideration of the factors set forth in Sec. 49-1742. Within a reasonable time after the completion of the hearing, the board shall enter a written order either granting or denying the

protest. A copy of the order and the findings of the board shall be mailed by the board or its secretary to all parties appearing at the hearing at their last known mailing address within five (5) days from the date of such order."

Defendants would show unto the Court that not a single appeal has been filed by the named plaintiffs, those seeking to intervene, or any member of the class they claim to represent with the Board of Commissioners or the Commissioner of Education and therefore Plaintiffs have failed to exercise or exhaust the administrative remedy and appeal available to them and this action should be dismissed as premature and defendants so move.

This transfer plan provides among other things:

"5. New students, otherwise eligible, living within the Corporate Limits of the City of Jackson entering the City Schools for the first time in a grade desegregated under this plan, may register at the school of their choice even though such school may be outside the district area in which said student lives. The Superintendent will then make assignment on the basis of districts set up in accordance with Paragraph 2. However, the Superintendent may, if sufficient facilities exist, at his option, assign said pupil to the school selected by the student. New students living outside the corporate limits of The City of Jackson desiring to enter a City School for the first time in a grade desegregated under this plan may, if otherwise eligible, attend city schools until further notice but only on condition that such student agree to accept assignment by Superintendent of Schools to a school for the convenience of the City School System.

Replication of Defendants to "Motion for Further Relief"

"6. (a) The Superintendent of Schools shall have the right to grant, or require, transfer in any individual case where necessary for obtaining maximum economy and efficiency of school facilities and personnel, considering, among other things, school capacity, class room capacity, central facilities capacity, teacher-pupil ratio, grade load, or for the accomplishment of any other purpose of this plan.

(b) The Superintendent shall further have the right to grant, or require, individual transfer where such transfer is necessary for the attainment of the best possible education by the individual.

(c) Any student may, for reasons satisfactory to such student and his or her parents, apply for a transfer to any other school in the City School System for which said student is otherwise eligible to attend and the Superintendent of Schools may, if sufficient space and other facilities exist in the school to which the transfer is requested, grant such application at his option and as the best interest of the City School System may appear to the Superintendent of Schools. Transfer during a school semester however is discouraged and such transfers will be granted only because of unusual circumstances and for good causes shown.

(d) All assignments, transfer or re-location of pupils will be in accordance with the Tennessee Pupil Assignment Law and appropriate regulations of the School Department."

Replication of Defendants to "Motion for Further Relief"

THIRD DEFENSE

Defendants would show unto the Court that in not a single instance do the Plaintiffs charge defendants with violating the provisions of the Desegregation Plan and Districting approved by this Court but instead reflect a dissatisfaction with the plan. For example:

Gooch child lives in South Jackson zone and was assigned to South Jackson. *Ex. A.* This child is actually named Ewings and her parents live at 121 Elm, also in the South Jackson District. Alice Gooch is grandmother.

Porter child lives in Lincoln district and was assigned to Lincoln School. *Ex. B.*

Lyons child lives in Washington-Douglass District and was assigned to Washington-Douglass. *Ex. B.*

Ledbetter child lives in South Jackson district and was assigned to South Jackson. *Ex. B.*

Davis child lives in South Jackson District and was assigned to South Jackson. *Ex. B.*

Morrow child lives in South Jackson District and was assigned to South Jackson. *Ex. B.*

White child lives in South Jackson District and was assigned to South Jackson. *Ex. B.*

Robinson child lives in South Jackson and was assigned to South Jackson. *Ex. B.*

Sorrells children live in South Jackson District and were assigned to South Jackson. *Ex. C.*

Glenn children live in South Jackson District but attended Lincoln prior to desegregation plan. These children

were given their choice of either of these two schools as required by the plan of desegregation. *Ex. D.*

Golden child lives in South Jackson District but attended Washington-Douglass prior to desegregation plan. This child was given a choice of either school. *Ex. E.*

Robinson child lives in South Jackson District but attended Lincoln prior to desegregation plan. This child was given a choice of either school. *Ex. F.*

Ledbetter child lives in South Jackson District but attended Lincoln prior to desegregation plan. This child was given a choice of either school. *Ex. G.*

Fisher children live in Lincoln District and were assigned to Lincoln. *Ex. H.*

Harris child lives in Lincoln District and was assigned to Lincoln School. *Ex. I.*

Merriweather child lives in Lincoln District and was assigned to Lincoln. *Ex. J.*

Davis child lives in Washington-Douglass District and was assigned to Washington-Douglass. *Ex. K.*

Moore child lives in South Jackson District and was assigned to South Jackson. *Ex. L.*

Brown child lives in South Jackson District and was assigned to South Jackson. *Ex. M.*

Merriweather child lives in Lincoln District and was assigned to Lincoln. The child Michael was enrolled in 1963 by principal error in Alexander as a student living within the Alexander District. When the error in residence was discovered the child Michael was allowed to continue in Alexander in 1963 and again in 1964. *Ex. N.*

Replication of Defendants to "Motion for Further Relief"

Each and every assignment complianed of was and is in exact conformity to the plan of desegregation heretofore approved by this Court.

Defendants further would show unto the Court that on August 16, 1964, a two page advertisement was published in The Jackson Sun, a newspaper of local circulation in Jackson, Tennessee, setting forth the Zoning Map and the plan approved by this Court for desegregation of City Schools and establishing a registration date for elementary grades as follows:

1st grade—August 18th
2-6 grade—August 19th-20th

In this registration a total of 280 requests for transfer were received. Of this total there were 63 applications for transfer to schools outside the district in which they live submitted by negro students, including plaintiffs, as follows:

	Applied	*Granted*
Alexander	35	6
Whitehall	11	4
Lincoln	—	–
Washington-Douglass	—	–
Parkview	9	1
South Jackson	—	–
West Jackson	8	5
Highland Park	0	–

Plaintiffs single out Parkview, Alexander and Whitehall and Defendant submits the following:

ALEXANDER SCHOOL

		White	*Negro*
Total students 1963-64	693	661	32
1964-65	652	565	87

Replication of Defendants to "Motion for Further Relief"

WHITEHALL SCHOOL

		White	*Negro*
Total students 1963-64	266	262	4
1964-65	306	290	16

PARKVIEW SCHOOL

		White	*Negro*
Total students 1963-64	587	587	–
1964-65	602	601	1

School capacity and class load compels consideration in such transfer handling as well as other factors and present load for schools and classes within schools is as follows:

WASHINGTON-DOUGLASS ELEMENTARY SCHOOL

1st Grade — 1 — 30
1 — 30

2nd Grade — 1 — 25 (1 & 2)
1 — 33
1 — 34

3rd Grade — 1 — 29
1 — 29

4th Grade — 1 — 34
1 — 34

5th Grade — 1 — 31
1 — 31

6th Grade — 1 — 31
1 — 31

13 Classroom teachers

1 librarian

Replication of Defendants to "Motion for Further Relief"

WASHINGTON-DOUGLASS ELEMENTARY SCHOOL

1 Multiple Handicapped

1 Principal

Total 16

Enrollment 402

Capacity 525

1 Audio-visual room

1 Remedial reading room

WEST JACKSON ELEMENTARY SCHOOL

1st Grade — 1 — 35
1 — 36

2nd Grade — 1 — 29 (1 & 2)
1 — 33
1 — 35

3rd Grade — 1 — 39
1 — 30 (3 & 4)

4th Grade — 1 — 40
1 — 31 (4 & 5)

5th Grade — 1 — 40

6th Grade — 1 — 31
1 — 30

12 Classroom teachers

1 Remedial Reading

1 Librarian

1 Principal

Capacity — 500

Enrollment 409

Replication of Defendants to "Motion for Further Relief"

SOUTH JACKSON ELEMENTARY SCHOOL

1st Grade — 1 — 38
1 — 38
1 — 38

2nd Grade — 1 — 35
1 — 35
1 — 34

3rd Grade — 1 — 37
1 — 36

4th Grade — 1 — 29 (3 & 4)
1 — 36
1 — 36

5th Grade — 1 — 31
1 — 31
1 — 31

6th Grade — 1 — 30
1 — 29

16 Classroom teachers

1 Librarian

1 Principal

Total 18

Enrollment 544

Capacity 525

1 Remedial Reading room

Replication of Defendants to "Motion for Further Relief"

LINCOLN ELEMENTARY SCHOOL

1st Grade — 1 — 35
1 — 35
1 — 34

2nd Grade — 1 — 28 (1 & 2)
1 — 35
1 — 35
1 — 35

3rd Grade — 1 — 33
1 — 33
1 — 33

4th Grade — 1 — 28 (3 & 4)
1 — 31
1 — 31
1 — 31

5th Grade — 1 — 33
1 — 33
1 — 34

6th Grade — 1 — 35
1 — 35
1 — 35

20 Classroom teachers

1 E.M.R.

1 Librarian

1 Principal

1 Remedial reading

Total 24

Enrollment 672

Capacity 875

1 Audio-visual room

Replication of Defendants to "Motion for Further Relief"

WHITEHALL ELEMENTARY SCHOOL

1st Grade — 1 — 40
1 — 29 (1 & 2)

2nd Grade — 1 — 38

3rd Grade — 1 — 39
1 — 28 (4 & 3)

4th Grade — 1 — 37

5th Grade — 1 — 35
1 — 25 (5 & 6)

6th Grade — 1 — 34

Classroom teachers 9

Librarian 1

Principal 1

Remedial Reading 1

Capacity 315

Enrollment 306

ALEXANDER ELEMENTARY SCHOOL

1st Grade — 1 — 34
1 — 34
1 — 33
1 — 26 (1 & 2)

2nd Grade — 1 — 35
1 — 35
1 — 34

3rd Grade — 1 — 32
1 — 31
1 — 33

Replication of Defendants to "Motion for Further Relief"

ALEXANDER ELEMENTARY SCHOOL

4th Grade — 1 — 33
1 — 32
1 — 31

5th Grade — 1 — 30
1 — 29
1 — 28
1 — 28

6th Grade — 1 — 38
1 — 39
1 — 37

Capacity 750

Enrollment 652

Classroom teachers 20

Remedial Reading 1

Librarian 1

Multiple Handicapped 1

Principal 1

Audio Visual 1

PARKVIEW ELEMENTARY SCHOOL

1st Grade — 1 — 34
1 — 34
1 — 34

2nd Grade — 1 — 28
1 — 29
1 — 29
1 — 28

Replication of Defendants to "Motion for Further Relief"

PARKVIEW ELEMENTARY SCHOOL

3rd Grade — 1 — 32
1 — 33
1 — 31

4th Grade — 1 — 31
1 — 30
1 — 30

5th Grade — 1 — 38
1 — 37
1 — 30 (5 & 6)

6th Grade — 1 — 37
1 — 37

Classroom teachers 18

Librarian 1

Remedial Reading 1

E.M.R. 1 (20)

Enrollment 602

Capacity 750

Audio-visual room 1

HIGHLAND PARK ELEMENTARY SCHOOL

1st Grade — 1 — 31
1 — 31
1 — 31

2nd Grade — 1 — 32
1 — 33
1 — 33

3rd Grade — 1 — 33
1 — 34
1 — 33

Replication of Defendants to "Motion for Further Relief"

HIGHLAND PARK ELEMENTARY SCHOOL

4th Grade — 1 — 36
1 — 35
1 — 29 (4 & 5)

5th Grade — 1 — 36
1 — 36
1 — 28 (5 & 6)

6th Grade — 1 — 36
1 — 35

Classroom teachers 17

Librarian 1

Remedial Reading 1

Principal 1

Enrollment 562

Capacity — 700 (after addition of four class rooms under construction)

FOURTH DEFENSE

The motion of plaintiffs contains prayers for relief which are in truth prayers for compulsory integration, rather than elimination of compulsory segregation based on race. Defendants are informed such is not required by the Constitution of the United States nor any interpretation thereof and that same should be denied.

FIFTH DEFENSE

Defendants respectfully submit that the question of faculty integration is presently under advisement by this Court, that the present usage of faculty is dictated by the requirements of giving the best possible education to the

greatest number of children within the system, that the present faculty assignment has no effect whatever on the question of desegregation, registration being accomplished primarily by the principal of each school personally with a few assistants, the greatest part of the faculty having no association with registration at all; that all such principals are instructed to and have applied the plan in completely neutral fashion and defendants submit that no complaint to the contrary has been registered in the motion filed against it; that the destruction of the entire City School System is seeded in this request in such fashion as to be beyond the control of defendant officers, not from violence but from student withdrawal, to the overwhelming damage of all students, a result wholly unnecessary to achieve the elimination of compulsory segregation based on race.

SIXTH DEFENSE

Defendants would show unto the Court that the real plaintiff in this proceeding is the National Association for the Advancement of Colored People, to the best of defendant's knowledge an unincorporated association with headquarters in New York City; that such real plaintiff has a staff of attorneys on salary or fixed fee, including the Counsel appearing in this cause; defendants allege on belief that no named nominal plaintiff has been required to pay anything to counsel; that some of intervenors are themselves officers of the National Association for the Advancement of Colored People and have actively worked for months to secure enough individuals willing to allow their children and their names to be used to create the conditions here complained of; that therefore plaintiffs

are not entitled to attorney's fees in this cause and same should be disallowed.

And now having fully replied to the motion filed against defendants, a motion in name only but actually an effort to set aside this entire proceeding and re-try same, defendants move for the dismissal of such motion at the cost of plaintiffs.

/s/ RUSSELL RICE
RUSSELL RICE
Attorney for Defendants
215 East Main Street
Jackson, Tennessee

Pre-Trial Order

Filed September 28, 1964

[Caption Omitted]

A pre-trial conference was held in Memphis in connection with the motion of plaintiffs for further relief and the motion of additional parties to intervene filed on September 4, 1964, and after argument and statements of counsel,

It is ORDERED:

1. The motion of additional parties to intervene is granted.

2. Plaintiffs are entitled to reopen the question as to whether the unitary zones applicable to desegregated grades in elementary schools have been gerrymandered to prevent the abolition of discrimination based on race or color.

3. Plaintiffs are entitled, in connection with their gerrymandering contention and their contention that assignments and transfers are not being handled on a nondiscriminatory basis, to review all registration, assignment and transfer records of the elementary schools for the school years 1963-64 and 1964-65. The parties will exchange their summaries of the information contained in these records in an effort to stipulate what these records in general reflect.

4. Plaintiffs will, after having received these records and prior to the next hearing, determine what school personnel should be subpoenaed for the hearing, keeping

the number to the minimum necessary to support their position, and the Court will then hear any motions to quash subpoenas, if any.

5. The Court will rule on the motion to desegregate faculties at the next hearing.

6. The verbal motion to strike parts of defendants' reply having to do with the right of plaintiffs to recover attorneys' fees is overruled, subject to the right to plaintiffs to renew the motion at a later time.

ENTER this 28th day of September, 1964.

/s/ BAILEY BROWN
United States District Judge

Supplemental Replication to Motion of September 4, 1964

Filed November 13, 1964

[Caption Omitted]

Defendants submit this supplemental replication in order to bring clearly into focus the issues set up by the Pre-Trial Order of the Court filed September 28, 1964.

I.

Defendants deny that the unitary zones established for the elementary schools of The City of Jackson have been "gerrymandered" for any purpose.

II.

Defendants deny that the transfer plan adopted by it is discriminatory or that same is "not being handled on a non-discriminating basis."

III.

Defendants categorically deny all other allegations contained in the September 4, 1964 motion except as may be admitted hereafter.

IV.

Now replying directly to the questions of assignment and transfer defendants say:

1. That the transfer plan speaks for itself and that by its terms is neither discriminatory nor unduly cumbersome, meeting all requirements of the Constitution of the United States and all interpretations thereof.

2. That the actual application of the transfer plan is as follows:

a. A student—*any* student—may register at the school of his choice. All that present themselves are accepted.

b. A student—*any* student—living in the unitary zone of the school at which they register is registered on a white card by the principal and this student is accepted into such school without further handling and as a matter of right.

c. A student—*any* student—living outside the unitary zone of the school at which they register is registered on a red card by the principal and this coded (red) card is then sent to the central school office for approval or disapproval by the Superintendent. If approved by the Superintendent the student is granted the transfer and allowed to enter the school at which he registered. If disapproved by the Superintendent, the student is assigned to the school of the district in which he lives or, in case the student was enrolled in some other school the previous year, is given a choice of his district school or the school attended the previous year. In either case the parent is notified by mail.

d. Any county student—*any* student—may likewise register at the school of their choice where a yellow code card is used. All such cards are sent to the Central Office where the students are assigned on the basis of best advantage to the system, such as class and school load, etc.

e. A student—*any* student—granted transfer to a school in 1963-64 is treated the same as a student living in that district in 1964-65. Transfers are discouraged but when granted are allowed to continue so long as some other

student living in that same zone be not displaced thereby. The moving of students each year is not conducive to the maximum achievement of the student in studies and produces social, emotional and disciplinary problems. Therefore a transfer once made is honored as long as no one else is deprived of a right thereby.

f. Any white student and any negro student living in the unitary zone of a school made up altogether, or primarily, of members of the opposite race are *permitted, if they voluntarily request it,* to transfer into a school composed primarily, or altogether, of members of their own race. *There is absolutely nothing compulsory about this.* This transfer is granted without exception to white and negro students alike but the allegation that white children are allowed to transfer to any school at will under these, or any other circumstances, is denied. To *compel* a student to attend against his will a school comprised altogether, or predominantly, of students of the other race will, in the present state of society in this area, place such student up against emotional, social and psychological factors destructive of the educable potential of such child and potentially dangerous to the general well being and the emotional and psychological development of the child.

g. Transfers during the 1964-65 year were handled as follows: (up to and including September 4, 1964)

Supplemental Replication to Motion of September 4, 1964

CITY OF JACKSON
SCHOOL DEPARTMENT
1964-65

Analysis of Registration by Students Living Outside the Unitary Zone of the School of Registration for Grades 1-6 Inclusive, Showing Disposition of Same by School Superintendent in the Granting or Denying Transfer.

Alexander

71 students presented themselves for registration. All were registered.

35 of the 71 were of the negro race.

36 of the 71 were of the white race.

6 negro children living on the border street were granted transfers to Alexander.

11 negro children living in South Jackson district were denied transfer and assigned to South Jackson.

9 negro children living outside the Alexander area were denied transfer and were given a choice of either South Jackson or Lincoln, the school of last attendance or of their residence.

8 negro children living in the Lincoln District were denied transfer and were assigned to Lincoln.

1 negro child was denied transfer and given a choice of Washington-Douglass or of South Jackson, the district of last attendance or of residence.

6 white children living in West Jackson District were denied transfer and assigned to West Jackson, the district of residence.

2 white children were granted transfer because they live on border street.

1 white child was granted transfer because mother teaches at Alexander.

12 white children were granted transfer because of brothers or sisters already attending and eligible to continue to attend Alexander under the plan.

14 white children were denied transfer and assigned to other schools on a class balancing basis.

1 white child denied transfer and assigned to Whitehall.

West Jackson

76 students presented themselves for registration. All were registered.

8 of the 76 were of the negro race.

5 negro children were granted transfer because of boundary line proximity and class balancing basis.

3 negro children applied late but were denied transfer and assigned to South Jackson, the zone of residence.

25 white children from other areas were granted transfer for class balancing and better use of school capacity.

2 white children granted transfer whose mother teaches at West Jackson.

2 white children granted transfer from Highland Park area because of family moving.

7 white children denied transfer and assigned to Alexander, the zone of residence.

1 white child denied transfer and assigned to Highland Park, the zone of residence.

31 white students from county assigned to West Jackson to obtain maximum use of school capacity and balance classes.

1 white student from county denied admission and assigned to Whitehall to balance class load.

Parkview

61 students presented themselves for registration. All were registered.

9 of the 61 were of the negro race.

52 of the 61 were white.

1 negro student was granted transfer because of residence.

8 negro children were denied transfer and assigned to Washington-Douglass, the zone of residence.

9 white children denied transfer and assigned to Whitehall, zone of residence.

42 white children granted transfer because of load and class balance.

1 white child granted transfer for EMR class reasons.

Whitehall

25 children presented themselves for registration and all were registered.

11 of the 25 were of the negro race.

4 negro children were granted transfer because of proximity to border of zone.

Supplemental Replication to Motion of September 4, 1964

7 negro children were denied transfer and assigned to Lincoln (6) or Washington-Douglass (1), the zone of residence.

14 white children were granted transfer.

Highland Park

17 applied

no negro children involved

No transfers were granted and all were assigned to zone of residence if living in City. 5 County resident students were assigned to West Jackson.

Lincoln

5 children presented themselves for registration. All were negro. All were registered.

2 children were granted transfer as one of the school teachers is responsible for them.

2 children were denied transfer and assigned to South Jackson, zone of residence.

1 child given choice of Lincoln or South Jackson.

Washington-Douglass

3 children presented themselves for registration. All were registered. All were negro.

1 granted transfer as mother teaches in school.

2 assigned from County.

South Jackson

22 children presented themselves for registration. All were registered. All were negro.

15 negro children were denied transfer and assigned to Washington-Douglass, the zone of residence.

1 negro child granted transfer.

5 county children assigned to South Jackson.

1 negro child living in South Jackson District enrolled there and then sought transfer to Washington-Douglass. Denied.

In connection with all schools and all students, a student granted a transfer in 1963-64 school year was treated in 1964-65 the same as a student living in the zone of the school to which transferred, provided no student actually living in the zone be displaced thereby. Transfers were and are discouraged but when granted the student is allowed to continue in the school to which transferred as nearly as is permissable under all pertinent factors. Moving of children from school to school yearly is not conducive to maximum educational achievement by such student.

h. Number of appeals to the Board of Education from or by parents or students dissatisfied with transfer or assignment for the 1963-64 or the 1964-65 school year, none

V.

Replying directly to the allegations relating to integration of faculty defendants say:

a. The integration of the faculty is not related to nor necessary for the achievement of elimination of compulsory segregation within the City Schools of the City of Jackson.

b. The elimination of compulsory segregation within the first six grades of the City Schools of The City of Jackson is an accomplished fact, without necessity of faculty integration.

c. The Constitution of the United States of America does not require nor authorize the Federal Courts to assign by order the personnel of the City School Department of The City of Jackson and indeed would itself be a violation of such Constitution.

d. The case of *Sloan* v. *Tenth School District* (Ex. "A" to Motion of Plaintiff) involves a situation in which the job security of negro teachers was threatened, a question not involved in this proceeding. The Court also makes reference to testimony of Dr. Eugene Weinstein, a sociologist, that in his opinion faculty segregation tended to "discourage" school selection by a student if the faculty be of the opposite race. Such situation, even if true in Nashville and even if of any relevancy in that case, is not true here where the only persons asking this Court for relief are members of the negro race who are making the biggest complaint that negro children cannot get into schools staffed by white teachers fast enough. Obviously such segregation of faculty is no deterrent to plaintiffs in the case before the Court.

VI.

Replying directly to plaintiff's claim for allowance of attorney fees, defendants recognize the question to be within the discretion of the Court giving due consideration to all relevant factors.

The case of *Bell* v. *School Board, etc.* 321 F(2) 494 (4th Circuit) is not comparable to any degree with the instant

case. In the Bell Case the District Judge disallowed attorneys fees. The Fourth Circuit awarded such fees (Judges Hayneworth and Boreman dissenting) on the basis of a long pattern of evasion and obstruction including not only taking no initiative but interposing a variety of administrative obstacles to thwart plaintiffs in the case. The 4th Circuit called it an "extreme" case.

The City of Jackson not only took initiative but has and is living up to the letter and intent of the order of this Court with high quality good faith, that all allegations to the contrary are mere allegations and this defendant demands strict proof of same.

/s/ RUSSELL RICE
Attorney for Defendants
215 East Main Street
Jackson, Tennessee

STATE OF TENNESSEE
COUNTY OF MADISON

C. J. Huckaba, being duly sworn makes oath that he is the Superintendent of Schools for The City of Jackson, Tennessee School Department and that the foregoing statements of fact are true to the best of his knowledge and belief.

/s/ C. J. HUCKABA
C. J. Huckaba

Sworn to and subscribed before me this 12th day of November 1964.

/s/ PATSY SANFORD
Notary Public

My commission expires:
Oct. 22, 1968.

Petition

Filed November 13, 1964

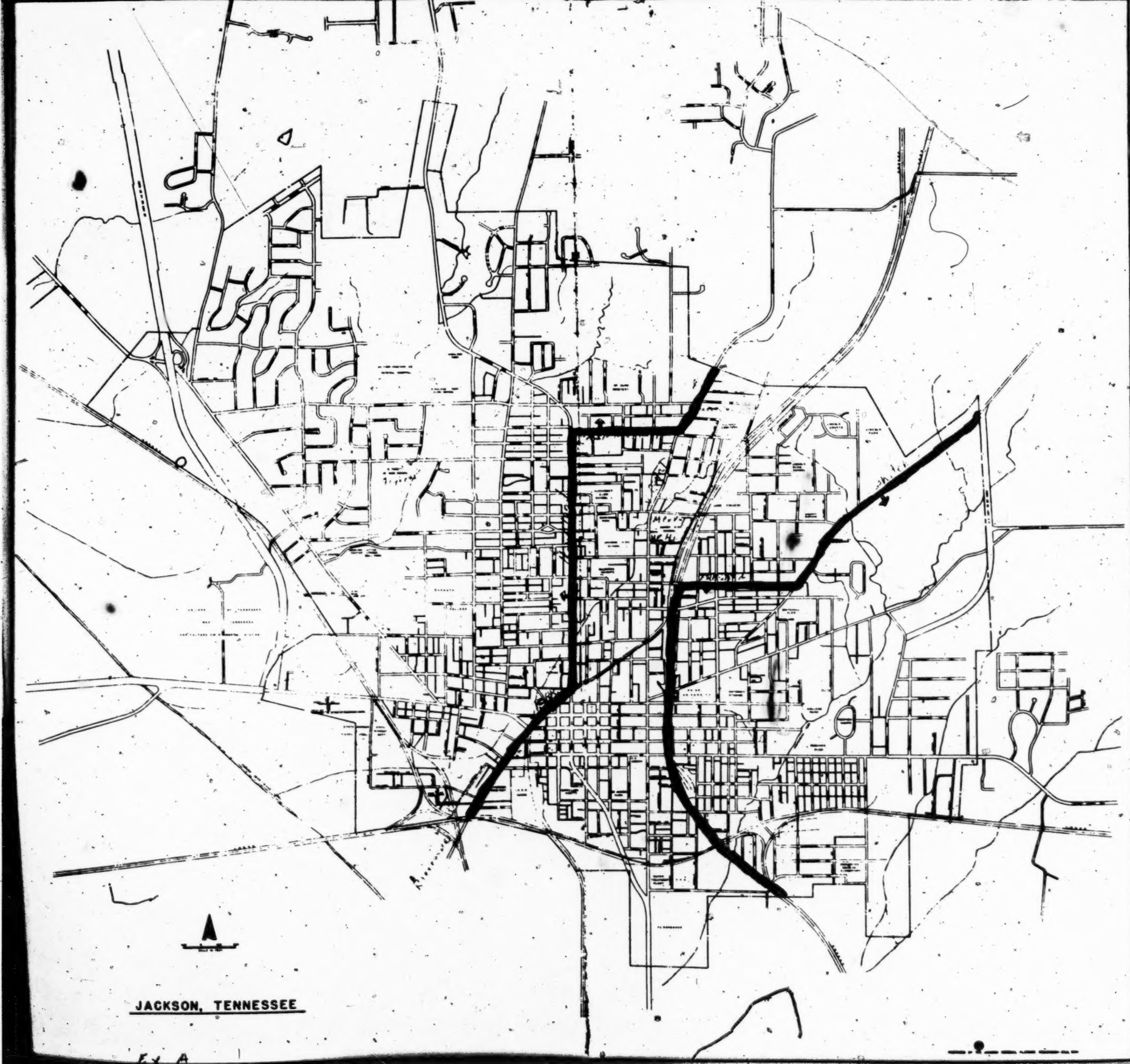
[Caption Omitted]

Come now the Defendants Board of Commissioners of The City of Jackson, Tennessee, et al., pursuant to Paragraph 5 of the Judgment of this Court filed August 20, 1963, and submit for the Court's approval a plan for unitary non-racial zones for the Junior High School System of The City of Jackson to be effective at the beginning of the fall term of the 1965-66 school year, this plan marked Exhibit A to this petition.

The Court is advised that Jackson Junior High School shown on the map is a new school just being completed which will be in use by the time this plan is effective. The present Jackson Junior High School located on Deaderick Avenue may be or may not be continued in service, a question not yet determined. The map as presented does not include it but may be amended later if the building is continued in service.

WHEREFORE, Petitioners pray the judgment of this Court approving such plan.

/s/ RUSSELL RICE
RUSSELL RICE
Attorney for Defendants
215 East Main Street
Jackson, Tennessee



JACKSON, TENNESSEE

Ex A

Specification of Objections Filed by the Plaintiffs to the Plan for Unitary Non-Racial Zones for the Junior High School System of the City of Jackson Filed by Defendants

Filed November 30, 1964

[Caption Omitted]

Come now the plaintiffs in the above cause, by their undersigned attorneys, and object to the plan for unitary non-racial zones for the Junior High School System of the City of Jackson filed by the defendants herein on or about the 14th day of November, 1964, upon the following grounds:

1. That the plan is not complete or final in that it states: "The present Jackson Junior High School located on Deaderick Avenue may or may not be continued in service, a question not yet determined."

2. The zoning plan for said junior high schools as shown on the map filed as Exhibit "A" to the petition filed by the defendants, and the zone lines therein drawn, were accomplished by defendants for the purpose of preserving segregation; said zoning lines were arbitrarily drawn without consideration for pertinent factors and were drawn for the purpose of defeating or hindering desegregation, in violation of the Fourteenth Amendment to the Constitution of the United States.

3. The defendants fail and are unable to carry their burden of proof to demonstrate that the zone lines of each school as shown in said plan were not drawn with a view to preserve a maximum amount of racial segregation; and

Specification of Objections Filed by the Plaintiffs to the Plan for Unitary Non-Racial Zones, etc.

to perpetuate or aid in perpetuating racial segregation in the junior high schools.

4. The said zoning lines for the junior high schools were manifestly gerrymandered so as to provide and maintain maximum racial segregation in the said junior high high schools in violation of the Fourteenth Amendment to the United States Constitution.

5. The new junior high school referred to in said zoning plan (Jackson Junior High School) as well as the recently constructed Tigrett Junior High School were geographically located by defendants for and with the purpose and effect under said zoning plan of providing and maintaining maximum racial segregation in the junior high schools in violation of the Fourteenth Amendment to the Constitution of the United States.

6. Said racially gerrymandered zoning plan in conjunction with the racially discriminatory assignment and transfer plan which has been adopted and enforced by the defendants in schools or grades desegregated under the desegregation plan in this case, tends to perpetuate segregation in the City School System of Jackson in violation of the Fourteenth Amendment to the Constitution of the United States. Said unconstitutional segregation and discrimination is further aided, accomplished, and perpetuated by defendants' continued practice and policy of maintaining racially segregated teacher and faculty assignment in the schools of Jackson.

WHEREFORE, PREMISES CONSIDERED, plaintiffs pray that said plan of non-racial unitary zones for junior high schools

Specification of Objections Filed by the Plaintiffs to the Plan for Unitary Non-Racial Zones, etc.

within the City of Jackson, proposed by the defendants in their aforesaid petition, be disapproved by the Court and that the defendants be required to present on or before the date heretofore specified by the Court a plan of unitary non-racial zones for the junior high schools of said City which shall not be gerrymandered according to race or designed or have the effect of preserving segregation to any extent and which shall be based on proper objective factors and criteria entirely unrelated to race.

Z. Alexander Looby
Avon N. Williams, Jr.
J. Emmett Ballard
Jack Greenberg
Constance Baker Motley
James M. Nabritt, III

By /s/ Avon N. Williams, Jr.
Avon N. Williams, Jr.

Attorneys for Plaintiffs.

Additional Motion for Further Relief Against the Defendant, Board of Commissioners of the City of Jackson, and C. J. Huckaba, City School Superintendent

Filed April 19, 1965

[Caption Omitted]

Plaintiffs, by their undersigned attorneys, in addition to their Motion for Further Relief and To Add Parties as Additional and/or Intervening Plaintiffs heretofore filed in this case in September, 1964, further move this Court for an order granting still further relief in this case. The further relief sought herein is an order directing defendants to:

(1) Accelerate desegregation in the City of Jackson School System to the end that complete desegregation may be effected by September, 1965;

(2) Eliminate all racial restrictions, distinctions, and discriminatory practives from all teacher in-service training and professional or school-related activities sponsored or supported by the City of Jackson School System; and

(3) Eliminate all racial restrictions, distinctions and discriminatory practices from all school-sponsored curricular and extra-curricular activities, including cultural and/or recreational programs conducted under the auspices of and/or with the direct or indirect support or cooperation of the City of Jackson School System; and

(4) Eliminate all other racial classifications and distinctions from the operation of the City of Jackson Public School System.

Additional Motion for Further Relief Against Defendants

In support of this additional motion, plaintiffs show unto this Court the following:

1. On 20 August 1963, this Court entered a judgment requiring desegregation of the public schools of the City of Jackson, Tennessee, within four years, encompassing the first three grades in the school year 1963-64, the next three grades in 1964-65, and two grades successively each school year thereafter until completed. Said judgment approved school zone lines established by defendants and approved an admission and transfer plan adopted by defendants. The Court held under advisement the claim of plaintiff for desegregation of teachers and principals pending the implementation of the plan.

2. On 4 September 1964, plaintiffs filed a Motion for Further Relief against the City School defendants praying for the additional intervention of additional plaintiffs, for injunctive relief against a racially discriminatory admission and transfer plan or policy operated by defendants, for relief against alleged gerrymandering of geographical school zone lines established by defendants, for injunctive relief requiring non-racial assignment and employment of teachers and other professional personnel in the City Schools, and for reasonable attorneys fees for plaintiffs' attorneys.

3. About 11 September 1964, defendants filed their Replication to said Motion for Further Relief and on 28 September 1964, following a Pre-trial Conference held in Memphis, this Court entered a Pre-trial Order granting the Motion for Additional Plaintiffs to Intervene, holding that plaintiffs are entitled to reopen the question of racial gerrymandering of school zones, holding that plain-

tiffs are entitled in connection with their gerrymandering contention and their contention that assignments and transfers are not being handled on a non-discriminatory basis, to review certain school records and directing the parties to exchange their summaries of the information contained in these records in an effort to prepare stipulations and to determine what school personnel should be subpoenaed for the hearing, deferring the Motion to Desegregate Faculties to the next hearing, and overruling the verbal Motion to Strike Parts of Defendants' Replication pertaining to the right of plaintiffs to recover attorneys fee subject to the right of plaintiffs to renew the motion at a later time.

4. On 12 November 1964, defendant City School officials filed a Supplemental Replication and a Motion to Consolidate its Petition for Approval of Non-Racial Unitary Zones for Junior High Schools with Plaintiffs Motion for Further Relief. This motion was granted, by consent of the plaintiffs, subject to the defendants making available to plaintiffs the same records relating to registration and assignment of pupils in the Junior High Schools that were made available for the Elementary Schools.

5. Said Motion for Further Relief filed by plaintiffs on 4 September 1964 is still pending awaiting the completion of the surveys of the records and compilation and exchange of data mentioned above prior to being set for hearing by the Court.

6. On or about 14 September 1964, after plaintiffs' said motion was filed, the defendants gave all white school teachers an in-service training day and allowed a holiday for all children enrolled in the formerly white schools of

the City of Jackson to attend the Madison County Fair. However all formerly Negro schools, which remain segregated completely with all Negro faculties and student bodies, were kept in session, the Negro teachers being assigned a separate in-service training day on September 25, and the Negro children enrolled in these Negro schools being denied the privilege of having said holiday to attend the County Fair. Negro parents, learning of this discrimination, kept their children out of school and sent them to the Fair along with the white children and the few Negro children attending formerly white schools. Defendants, City School officials, immediately took punitive action against each of said Negro school children enrolled in the all-Negro schools, placing them "on probation in the Jackson City School System for the remainder of the 1964-65 school year for taking part in an organized boycott of the City Schools on this date by failing to attend school." Several months elapsed before defendants, under pressure from Negro PTAs and other Negro civic groups in the community, finally withdrew this racially discriminatory punitive action against Negro school children.

7. Defendants in the current school year have introduced several new and important courses in modern education in formerly white schools of the Jackson School System which are denied to Negro school children. For instance, a "36-station language laboratory" was installed at Jackson High School to facilitate the learning of French and Spanish and a "newspaper in the classroom" program "to promote a more discriminating and purposeful reading of the newspaper with the end objective of providing better informed citizens in a free society" was in-

troduced in the seventh grade at Tigrett and Jackson Junior High Schools after the beginning of the school year in September, 1964, Negro school children who, according to the proof introduced by defendants on the original trial of this case in August, 1963, have lower achievement levels than white children and, therefore, manifestly need these modern educational and cultural programs even more than white children, were denied the privilege of attending these courses.

8. On 11 February 1965, the Jackson Symphony Orchestra gave concert performances in Tigrett Junior High School for the fourth, fifth and sixth grades of the Madison County Schools and the fifth and sixth grades of the City of Jackson Schools. Negro children enrolled in the all-Negro schools of said school systems were entirely excluded from this program, in accordance with defendants' general policy and practice of continued segregation and exclusion of Negroes in segregated Negro schools from cultural and other extra-curricular programs.

9. No administrative reasons are present justifying the continued deferral of immediate desegregation.

10. Continued segregation fosters and encourages the discriminatory restrictions and practices in faculty training and professional activities and in school-sponsored or school-supported curricular and extra curricular activities for students as set out hereinabove.

WHEREFORE, in addition to the relief sought in the said Motion for Further Relief heretofore filed on 4 September 1964, plaintiffs further pray for an order directing defendants to:

Additional Motion for Further Relief Against Defendants

1. Accelerate desegregation in the City of Jackson School System, to the end that complete desegregation may be affected by September, 1965;

2. Eliminate all racial restrictions, distinctions, and discriminatory practices from all teacher in-service training and professional or school-related activities sponsored or supported by the City of Jackson School System;

3. Eliminate all racial restrictions, distinctions and discriminatory practices from all school-sponsored curricular and extra-curricular activities, including cultural and/or recreational programs conducted under the auspices of and/or with the direct or indirect support or cooperation of the City of Jackson School System; and

4. Eliminate all other racial classifications and distinctions from the operation of the City of Jackson Public School System.

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By /s/ Avon N. Williams, Jr.
Avon N. Williams, Jr.

Attorneys for Plaintiffs

Replication of Defendant to Additional Motion for Further Relief

Filed May 18, 1965

[Caption Omitted]

Defendants, for replication to the Additional Motion for Further Relief filed against it in the name of the Plaintiffs says:

1. As to Paragraph 1-5 of the allegations of the Plaintiff, beginning on page two of their motion, the Defendants say that the record speaks for itself.

2. Replying to paragraph 6 in such motion, Defendant would show unto the Court that historically within Madison County, Tennessee, prior to 1964, two county fairs had operated within Madison County, an all-white fair known as the West Tennessee District Fair and an all-colored fair known as the West Tennessee A&M Fair; that historically within The City School System it had been the custom to designate one day during the white fair as an in-service date for training of teachers within white schools which served the double purpose of carrying on required in-service training and of allowing white children to attend the white fair. Similarly, it had been the custom to set a day of in-service training in the Negro schools within the City of Jackson to fall within the week of the West Tennessee A&M Fair, thereby serving the double purpose of carrying on required in-service training for teachers and of allowing Negro students to have a day off in which to attend the Negro fair; that in 1964 these two fairs were scheduled to be held during the fall of that year and in view of this the historical

custom was followed in setting up the 64-65 school calendar; that this calendar was prepared and approved by The City of Jackson School Board in the spring of 1964 and published, then approved to the extent required by law by the Department of Education of the State of Tennessee; that in the summer of 1964 it was determined by fair officials to discontinue the West Tennessee A&M Fair and to conduct only an integrated West Tennessee District Fair.

That in the fall of 1964 prior to the opening of the West Tennessee District Fair representatives of the Central Council of the PTAs of the predominantly negro schools within The City of Jackson called upon the Commissioner of Education in regard to the West Tennessee District Fair at which time the situation was explained to these representatives in detail. The calendar as established by The City of Jackson School Department for 64-65 was the same type of calendar as had been used in the City of Jackson for nearly a hundred years to the complete satisfaction of Negro and White citizens, that the change in the situation was not caused or motivated by the School Department of The City of Jackson; that the days in question in the calendar were not fair holidays but instead were in-service training days. It is true that on the 14th day of September, 1964, for in-service training the formerly white schools of the City of Jackson enjoyed a holiday. This holiday applied both to *Negro and* White students within these schools. It is true that on September 25, 1964, the formerly Negro schools in the City of Jackson because of in-service training had a holiday. Neither holiday was a fair holiday and no child was denied the privilege of attending the West Tennessee District Fair.

Replication of Defendant to Additional Motion for Further Relief

It is true that an organized boycott took place within the formerly Negro schools of the City of Jackson on September 14, 1964 and that those students taking part in such boycott were placed on probation. It is likewise true that said pupils remained on probation for several months before such probation was removed by the City School Department, not because of pressure from anybody but out of compassion for the children involved who had been made into tools of those seeking to create racial issues where none existed.

The *1965-66* school calendar within the City Schools of the City of Jackson has been adopted by the School Board of the City of Jackson and a copy of same is attached hereto and marked Exhibit A. The Court will note that in-service training has been scheduled at times other than during the Fair week and all students in all schools will be equally able to attend the West Tennessee District Fair, if they choose to do so, outside of school hours.

3. Replying to paragraph seven in the Additional Motion for Further Relief, Defendants would show unto the Court that it is true that a language laboratory was installed at Jackson High School to facilitate the learning of languages. This Defendant does not contend that each and every school has the exact same equipment but, instead, says that equipment is supplied to the various schools in accordance with the needs and capabilities of the school involved; that Jackson High School has a great demand for language training and has students capable of being gainfully assisted by such laboratory; that at the present time Merry High School has no need for such language laboratory; that this is a decision within the

Replication of Defendant to Additional Motion for Further Relief

discretion of the School Department of the City of Jackson as such school board is under no obligation to furnish identical equipment to every school; that Merry High School language department is equipped with electronic recording devices and language tapes which are completely adequate to the needs of that particular school; that when in the opinion of the School Department additional equipment is needed and justified the same will be installed in Merry High School.

Defendants admit that there was introduced into Tigrett Junior High School and Jackson Junior High School, in the seventh grade thereof, a "newspaper in the classroom" program, beginning in September of 1964; that such Program was introduced in these schools on a pilot basis upon the offer of The Jackson Sun to furnish newspapers free to such schools and, at the expense of such newspaper, to send a teacher to take a special course in connection with this program; that the program appears generally desirable and the same will be introduced into the Merry Junior High School beginning in September, 1965 under the supervision of Alexander Moore, Principal, and of teachers, Annie Mae Bond and Ruth Brantley, which teachers will receive special training at the beginning of the 65-66 school year for this purpose; that such programs on a pilot basis were in accordance with the offer of The Jackson Sun, that said publishing company will furnish papers free to Merry Junior High School beginning in the fall of 1965.

4. Replying to Paragraph eight of Plaintiff's motion, Defendant would show that the Jackson Symphony Association, an organization entirely independent of The City

of Jackson, invited students within the fifth and sixth grades of Alexander, Highland Park, Whitehall, West Jackson and Parkview Elementary Schools within The City of Jackson to attend a concert of the Symphony Orchestra on February 11, 1965; that the City of Jackson School Department had nothing whatever to do with the designation of the classes invited; that within the fifth and sixth grades of Alexander, Whitehall and West Jackson there are Negro students who were invited as well as the white students and all of them present in school on that date atended. The Defendant submits that it is beyond the capabilities of The City of Jackson to control such gratuitous offers made by interested citizens and organizations and can only gratefully accept such offers as from time to time are so made when of a desirable nature. The alternative is to not accept the offers at all.

5. Replying to Paragraph nine in Plaintiff's motion Defendant submits that the question of administrative problems which support the Court's plan was fully adjudicated in the first hearing on such plan and, in fact, the testimony offered was not contradicted at all by the Plaintiffs; that no reason, factual or otherwise, is presented in support of this paragraph in Plaintiff's motion and that this paragraph presents no new issue to the Court; that the proof showed without contradiction the critical period with the most administrative problems is the Junior High School and High School age group, just now being reached.

6. Replying to Paragraph ten in Plaintiff's motion, Defendant would show unto the Court that the school calendar attached hereto as Exhibit A indicates a complete

elimination of all professional activities from school participation. The teachers themselves belong to various teacher professional organizations, a matter wholly beyond the control of the Defendants; that the West Tennessee Teacher Professional Holiday and the State Teacher Professional Holiday are holidays given to every teacher within the City School System and the teacher may attend any organizational meeting that they may choose to attend, this being a non-paid day completely beyond the control of The City of Jackson School Department.

Defendants would show that from time to time throughout the year integrated principal meetings occur, integrated textbooks committee meetings occur; that all mass meetings of faculty by race have been eliminated from the 65-66 school calendar; that such matters have no bearing at all upon the attainment of a constitutionally operated school system.

Defendant would show unto the Court that PTA groups are integrated in those schools wherein both white and negro students attend but are still segregated in schools where mixing of the races has not yet occurred; that this situation is wholly beyond the control of the Defendants; that the PTA groups are chartered by a National and State organization and are comprised largely of the parents whose children attend the respective schools; that the City School Department cooperates with these groups to the best of its ability but is unable to control their organization or membership.

Further, that occasionally the City School Department at the request of such PTA groups, grants certain privileges to schools represented by such PTAs which result in an all-negro activity; for example, on May 14, 1965,

Replication of Defendant to Additional Motion for Further Relief

at the request of the President of the all-negro PTA Council, the City School Department allowed a May Day holiday beginning at 12:30 o'clock p.m. for the predominantly negro schools while the predominantly white schools remained in session, (this PTA Council, incidentally, being the same group which complained so bitterly about the 1964 Fair Day arrangement as set out in Paragraph two herein.) thereby unquestionably discriminating against the white children in the City Schools on the basis of race, this type of discrimination apparently being all right.

7. Defendants would show unto the Court that since the submission of the Junior High School districting plan, and since the last proceeding was had regarding elementary districting plans, the City of Jackson has expanded its City Limits to nearly double its present area, such expansion being effective May 19, 1965, at midnight; that in order to encompass such new area and to balance certain pupil load problems within the elementary schools, new districting maps have been prepared and are submitted herewith for approval of the Court, to be effective with the September 1965 year; that the pupils registered in the city schools in 1964-65 year plus the pre-school census taken that year, making a total of all children in the City of Jackson one through eighteen years have been analized as to residence and are depicted upon the maps with reasonable accuracy showing whence such children actually live. The new area is not so shown as the information is not presently available.

The new Junior High School Districting maps merely extend those districts already submitted to the new City

Replication of Defendant to Additional Motion for Further Relief

Limits; the new elementary maps do the same but contain certain changes from the districts approved by the Court.

8. The defendants consider it to be highly pertinent in this proceeding especially with regard to plaintiff's prayer for attorney's fees, that approximately ten days prior to the filing of the Additional Motion for Further Relief against this defendant and of the same proceeding against Madison County, Tennessee, the only local counsel representing plaintiffs indicated to the Court, in Chambers, that things were proceeding very well in both the City and County; that Counsel for this defendant recalls specifically the Court's question as to whether or not the negro citizens felt oppressed in either the City or County and, further, as to how things were getting along generally; that nothing of an affirmative nature was forthcoming in regards to such questions; that within ten days, out of Nashville, Tennessee, from a Nashville attorney, came these pleadings, bearing name also of New York Counsel as well as local counsel; that at the same time a complaint was filed against the Jackson-Madison County General Hospital; all of which bears out defendant's contention that the named plaintiffs or a local class, are not the real plaintiffs at all but instead the real plaintiff is the National Association of the Advancement of Colored People, a national organization supported by dues of its members and grants from various foundations, which organization pays its attorney and not the plaintiffs.

Now having replied fully to the Additional Motion for Further Relief, defendants pray:

1. That the amended Junior High School Districts be approved.

Replication of Defendant to Additional Motion for Further Relief

2. That the amended Elementary School Districts be approved.

3. That Plaintiff's two motions now pending against this Defendant be over-ruled to the end that Defendant can proceed with providing the best education possible under the circumstances to all children of The City of Jackson.

/s/ Russell Rice
Attorney for Defendants
215 East Main Street
Jackson, Tennessee

Exhibit A Annexed to Foregoing Replication

JACKSON CITY SCHOOLS

SCHOOL CALENDAR 1965-66

August 23, 24, 25, 26, 27, 30—In-Service

August 31, Tuesday—Classwork begins 8:30 A.M.—3:00 P.M. for all teachers

September 6, Monday—Labor Day

October 8, Friday—West Tennessee Professional Meetings

November 11, Thursday—Veterans Day

November 25, 26, Thursday and Friday—Thanksgiving Holidays

December 21, Tuesday—Christmas Holidays begin at close of school

January 3, Monday—Classwork resumes 8:30 A.M. all schools

January 19, 20, 21—Semester Exams—Junior and Senior High Schools

January 24, Monday—Second Semester begins

April 1, Friday—State Professional Meetings

April 8, Friday—Good Friday

May 6, Friday—In-Service for teachers—8:30 A.M. to 3:00 P.M.

May 25, 26, 27—Second Semester Exams for Junior and Senior High Schools

May 30, Monday—Teachers' Day at school 8:30 A.M.—3:00 P.M.—Junior and Senior High Schools

Exhibit A Annexed to Foregoing Replication

May 31, Tuesday—Report Cards for all schools—Teachers 8:30 A.M.—3:00 P.M.

May 31, Tuesday—Graduation Exercises at the Senior High Schools

Seven (7) days in-service in the above, leaving three (3) days of in-service to be made up of eighteen (18) faculty and/or group meetings.

Excerpts From Transcript of Testimony

• • • • •

—10—

C. J. HUCKABA, the said witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Rice:

Q. Will you state your name, please? A. C. J. Huckaba.

Q. Mr. Huckaba, what is your occupation? A. I am Superintendent of Jackson City Schools.

Q. You have testified before in these proceedings? A. Yes, sir.

Q. Now, in connection with the elementary school districting which the City of Jackson School Board has proposed, I will ask you if the maps which I am going to hand you—I would like to hand you a map and ask you to identify for the Court what it is. A. This is a school population map.

Q. You will have to talk a little louder. A. A school population map showing the zoning for the elementary schools.

Q. Actually, the map you hold in your hand has nothing to do with population. It is just the districts? A. That's right.

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Q. That is the districting for the elementary schools for the City of Jackson that is proposed in this hearing, is that right? A. Yes, sir.

Q. Does that differ somewhat from the original districting which the Court has already approved? A. Yes, sir, it does.

Q. Now, I will ask you, in order to make this easy to see and identify, if the large map which is on the easel

on which there appears light green lines, if those district lines are the same as the lines shown upon the map which you hold in your hand?

The Court: If you already know it is true, you can go ahead and say yes.

The Witness: Yes, that's true.

By Mr. Rice:

Q. I will ask also if the schools designated on the map which you hold in your hand by name are also shown on the large map as the light green areas circled with white dots? A. That's correct.

Q. Now, I hand you a series of maps purporting to be

the new districting maps for each elementary school within the City of Jackson by name, and I will ask you if those individual district maps are the same as the districting map, the large one upon the easel for the respective school districts? A. That is correct, Mr. Rice.

Mr. Rice: Now, I offer these maps for identification as Exhibits 1 through 9.

(Whereupon, the documents above referred to were marked Exhibits 1 through 9 respectively, and same will be found among the exhibits hereto.)

The Court: Give me which exhibits are which.

Mr. Rice: Exhibit No. 1 is all elementary districts.

Exhibit No. 2 is the Washington-Douglas District.

Exhibit No. 3 is the Lincoln District.

Exhibit No. 4 is the Alexander District.

Exhibit No. 5 is the Whitehall District.
Exhibit No. 6 is Highland Park.

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Exhibit No. 7 is South Jackson.
Exhibit No. 8 is West Jackson.
Exhibit No. 9 is Parkview.
The Court: All right. I have them all now.

By Mr. Rice:

Q. Mr. Huckaba, referring to the exhibits that you have there, Exhibits 2 through 9, which are the individual school districts, there appears upon the exhibits red and blue dots in various places of the exhibits. Now, as far as the exhibits which we handed you just now, not the big map, but for the sake of speed, I will ask you if the check of the addresses, the residences—well, let me ask you this: What do the red dots indicate on the exhibits that you have in your hand? A. The red dots represent negro families, negro students.

Q. The residences of these children and their families? A. Yes, sir.

Q. What do the blue dots represent? A. The residences of the white students.

Q. What span of years does this cover? How were these dots arrived at? A. They were arrived at from a census

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of the students and of the records that we had, and it represents from, say, about birth until eighteen years of age.

Q. Another way of putting it, you use the school registration and the pre-school census? A. That's right.

Q. That's where this came from? A. Yes.

Q. Were these maps and the compilation of these residences and so forth done under your supervision and direction? A. That's correct.

Q. Do they represent, within a reasonable degree of the ability of the maker of that map, to get them in the proper place, a reasonable depiction of the residences of the school children in the City of Jackson? A. Yes, sir.

The Court: Mr. Rice, are you going to be able to make this big map on the easel an exhibit in this case?

Mr. Rice: If the Court please, that is our working map, and I would hate to lose it.

The Court: It occurs to the Court that since

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Mr. Huckaba is going to be testifying about it and it is not the same thing as any of the maps marked Exhibits 1 through 9, that it might be necessary.

Mr. Rice: It is identical to the maps, 1 through 9.

The Court: As I understood it, No. 1 simply outlines the proposed unitary zones and Exhibits 2 through 9 show each elementary school zone separately with the number of white and negro children in each proposed zone of elementary school age.

Mr. Rice: No, sir; of all school age.

The Court: In other words, you show in Exhibits 2 through 9 the numbers of white and negro children living in each proposed elementary school zone for all ages from zero to eighteen?

Mr. Rice: In other words, this map and those are identical. The only difference is that on the large

map one dot represents one family and on the smaller maps one dot represents five families.

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Mr. Williams: Of course, if Your Honor please, in the light of what has been said, we want to object on the ground that what we are confronted with here today is the question of whether or not the school zones as presently constituted are racially gerrymandered in the light of the children who are now registered and attending school.

The Court: Are you objecting to the admissibility of the evidence?

Mr. Williams: No, sir. I am objecting to the relevancy of the evidence.

The Court: Well, that would make it inadmissible if it were irrelevant.

Mr. Williams: In the light of the fact that it includes information regarding children who are not in the school covering a period of an age span of—

The Court (Interposing): In other words, you say these maps are of no probative value on the issues we are trying?

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Mr. Williams: Yes, sir.

The Court: That objection is overruled. You may proceed, Mr. Rice.

By Mr. Rice:

Q. Now, Mr. Huckaba, the large scale map that is upon the easel, if I have correctly stated it, that is merely a larger depiction of these exhibits, Exhibits 1 through 9, that's correct, isn't it, as to districts and as to population

of the school children, and also by race? A. That's correct.

Q. And I believe that map also was prepared under your general supervision and direction, is that not true? A. Yes, sir.

Q. And are you prepared to tell the Court that these maps and these exhibits, the dots and the location of the families are reasonably accurate to the best of your knowledge and belief? A. I am.

Mr. Rice: So now we offer these exhibits as evidence, rather than identification.

Mr. Williams: May it please the Court, we make no objection with regard to the fact that these maps

obviously are, to some extent, hearsay and that counsel has only shown that they were prepared under the Superintendent's supervision and direction. We will accept that contingent upon counsel's accepting the same type of qualification from our expert witnesses.

The Court: We don't think there will be any objection on the basis that they had to set up their maps on what people told them as to what the facts are.

Mr. Rice: They are the facts. We wouldn't argue about that. I don't understand his bargaining with me on evidence.

Mr. Williams: I am not bargaining. I am simply saying that the evidence could be objected to in that the Superintendent has testified that the maps were prepared under his supervision and direction. So he has not gone out and surveyed the city to

establish the location of each child's residence himself personally.

The Court: So you are not objecting. You have to either object or not object.

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Mr. Williams: For the record, I am objecting.

The Court: The objection is overruled.

Mr. Williams: Very well, Your Honor.

By Mr. Rice:

Q. Now, Mr. Huckaba, we—well, I guess I stand here guilty until proven innocent. Answer me these questions, Mr. Huckaba:

In preparing your district lines and your district zones, what are some of the basic factors that must be considered in establishing the district lines for a school? A. First of all, you have to consider the location of your schools. You have to consider the number of rooms you have, the size of the building and facilities. You have to take into consideration where your children are, and you have to fit the number of students to the capacity of your schools to the very best of your ability, taking into consideration that some school buildings are larger than others.

Q. Does the proximity of one school to another school figure into it; that is a school of the same classification? A. That has something to do with it, but, of course, you

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have to take into consideration the number of class rooms in the buildings.

Q. Mr. Huckaba, in the replication of the School Board to the motion for further relief filed against—I guess we had better identify these motions. There are so many of them. The September 3rd, 1964, motion for further

relief filed against them, the School Board filed a replication, and you, perhaps, have a copy of it. I direct your attention to page 6.

The Court: Is this the first replication to the first motion?

Mr. Rice: Yes, sir, I believe it is. September 3rd was the first motion, I believe, and this is the replication to it.

Q. Now, Mr. Huckaba, I direct your attention to page 6, to the point on that page where the various schools are taken up as to capacity, class load and so forth. Do you find the point on there that I am talking about? I believe I gave you the right page, beginning here (indicating). It is the last paragraph of page 6, and then over to page 7. How many pages does that go? A. Bottom of 6, 7, 8, 9, 10, 11—I believe through 11.

Q. I will ask you, then, Mr. Huckaba, if the information which the City of Jackson filed in its replication beginning at the last paragraph on page 6 through page 11 of that first replication of the City to the September 3rd, 1964, I believe it was, motion for further relief, if those facts and figures were compiled under your direction and supervision? A. They were.

Q. I will ask you if you can state that those facts, to the best of your knowledge and belief, are true? A. They are true.

Q. Now, are those figures which you have there complete depictions of each individual school as to its capacity and as to its class rooms and teachers and so forth? A. They are.

C. J. Huckaba—for Defendants—Direct

Q. Now, those figures, Mr. Huckaba, if I may say this, would they not be reasonably true at this date, with every district except South Jackson and West Jackson, which we have changed under our proposed map? A. That's true.

Q. So those figures that you show in that replication, then, that is the result of the districting which you did

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initially on the elementary schools, is that not right? A. That is correct.

Q. I will ask you if that did not provide the various schools with a reasonable balance of pupils and class load and teacher load? A. They did.

Mr. Williams: That is objected to; that is a conclusion to be reached by the Court.

The Court: Well, isn't this gentleman being offered as an expert?

Mr. Williams: If the Court please, if our expert witnesses will be accorded that same privilege.

The Court: We can't bargain on all these points. We have to rule on each of them as they come up.

Mr. Williams: Then I would like my objection to stand.

The Court: Well, you are correct that it calls for an opinion and conclusion. But, as we all know, an expert witness can testify on conclusions and

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opinions; so we overrule the objection.

Mr. Rice: Now, I might ask the Court this: I think we qualified Mr. Huckaba, in our opinion, as an expert at the beginning of this hearing. I don't presume that we need to do that again.

The Court: I believe he testified that he has been in education all his life and has been Superintendent of the Jackson City Schools for some years, which we think would qualify him. Go ahead.

By Mr. Rice:

Q. Mr. Huckaba, in preparing your districts and boundaries, did the nature features within the City of Jackson, terrain features or thoroughfares or railroads and so forth, figure in your contemplation of them? A. Yes, sir, they figured to a large extent.

Q. I will ask you just exactly what those green—the green districting lines are, when you take them off the map and transpose them into the City of Jackson, what are they actually in the City of Jackson? A. They are main thoroughfares, and in some instances, railroads may

be involved, and, of course, we took into consideration the main thoroughfares, the main traveled streets.

Q. Mr. Huckaba, I direct your attention to the dividing line between the South Jackson district and the West Jackson district, which comes in on the map as a green line—what, in actuality, is that? Can you tell from there, or would you like to come closer? A. That's Poplar.

Q. Is that a highway? A. That's Highway 70.

Q. I call your attention to the dividing line between South Jackson and Washington-Douglas district, which begins at the south and goes all the way up serving as the dividing line between West Jackson and Whitehall and between Alexander and Lincoln, and I will ask you what is that actual boundary? A. That's Royal Street, I believe.

Q. I will ask you if that is a minor or major thoroughfare? A. That's a major thoroughfare.

Q. The dividing line between Lincoln and Alexander, then, turns east and runs down a street which is shown on this map. Can you tell me the name of the street?

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A. That's Alice Street.

Q. And what does it reach on the east margin? A. The railroad.

Q. And what does it follow going all the way out of the city? A. The railroad.

Q. Refer, please, Mr. Huckaba, to the boundary line between Lincoln Elementary and Whitehall coming in from the east, and I will ask you what that boundary line is? A. That's Highway 70.

Q. And when it turns west, just before it gets to Whitehall School and goes to the North Royal Street, what is that line? A. Preston.

Q. I will ask you if that is a major or minor thoroughfare? A. That's a major thoroughfare.

Q. I direct your attention between the boundary line between Whitehall and Washington-Douglas running from North Royal east, and I will ask you what that road is? A. That, I believe, is Chester.

Q. Would you look at the map closely? A. That's College. I am sorry.

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Q. I will ask you if that is a major or minor street? A. That's a major street.

Q. The boundary line between Washington-Douglas and Parkview, which is just west of Parkview, goes down what street, Mr. Huckaba? A. I believe that's Dempster.

Q. Is that a major street? A. I believe it is.

Q. Now, I direct your attention to the location of Whitehall School, which is in the bottom right-hand corner of

the City of Jackson, and I will ask you if the location of that school and the location of the Parkview School did not make that—I will ask you if that was not one of your more difficult areas that you zoned?

The Court: Were you not pointing to Washington-Douglas?

Mr. Rice: I am sorry.

Q. Washington-Douglas School in the bottom right-hand corner—and I will ask you if its location in the corner with the population shown to the west and north of it, if that produced any particular problem in the zoning?

Mr. Williams: Objected to as being leading and

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suggestive, if Your Honor please.

The Court: Objection overruled.

The Witness: That was a difficult school to assign pupils to, to get the numbers that school could hold.

By Mr. Rice:

Q. In order to maximize its capacity use, is that the idea? A. That's correct.

Q. Now, Mr. Huckaba, if you will, look in the Parkview Elementary district, and there appears just outside of the city limits a subdividing area. I will ask you what that is, if you know? A. That's the Circle Drive, the area that has been recently taken in by the City of Jackson.

Q. Is that now in the City of Jackson? A. Yes.

Q. At the time these maps were prepared, it was not, was it? A. That's correct.

Q. And it has been in the City of Jackson how long? A. Just about two weeks, I believe.

Q. I will ask you, Mr. Huckaba, if the City of Jackson

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city limits has extended to any extent to the northeast, and to the north and to the northwest? A. They have been extended considerably there, yes, sir.

Q. Were the city limits extended to the south to any lengths? A. Yes.

Q. Now, that southern extension, is there any population in there that you know of? A. Scarcely any—bottom land.

Q. Where, then, besides this area adjacent to Parkview were the heavy population concentrations? A. They are in the northeast, the north and the northwest.

The Court: Are you speaking now of the newly acquired area?

Mr. Rice: Yes, sir. It has been in about a week, Your Honor.

Q. Mr. Huckaba, in arriving at these decisions as to the districting of these schools, I believe you have spoken now of having to start with where the schools are with the capacity of the schools in relation to one another and borderlines, and I will ask you if you applied those factors in coming up with these districts? A. I did.

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Q. Now, as to the change that was made, I direct your attention to the West Jackson district, and I will ask you if you will describe in words as best you can, just exactly what change was made.

The Court: You are distinguishing now between the original elementary school zones, which were

approved by the Court, and the amended zones which you are proposing today?

Mr. Rice: Yes, sir.

Q. Would you point out for the record, as best you can, what was done to the West Jackson district? A. The area was extended eastward to include Royal, and this is Deaderick, and this is Preston.

Q. So this area that I am pointing to here was added to the West Jackson district? A. Yes.

Q. And that came off of what district? A. South Jackson.

Q. This line here used to come up here on the west border? A. Yes.

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The Court: Let me ask you this: Prior, Mr. Huckaba, to this amendment to your zoning, did the Washington-Douglas zone take in all of that area that is now an extension of West Jackson and just the eastern-most square of that area?

The Witness: I believe, Judge, that most of the area—now, it might have been some of the area right in here (indicating).

Mr. Rice: I think the map came down like this (indicating).

Mr. Williams: I am sure you meant South Jackson, Your Honor. You said Washington-Douglas.

The Court: Yes, that is incorrect. But what I am asking here now is that when you amended the map, the north part of the South Jackson zone was cut off and put into West Jackson, and that is the little square, which is the eastern-most part of the West Jackson school zone under the amended plan?

The Witness: That is correct, Your Honor.

Mr. Rice: I believe the Court will find that one or two lines other than that were straightened, but

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that has no consequence. They were merely straightened.

The Court: All right. You have there the map that was originally approved.

Mr. Rice: Yes, sir. The Court will notice by comparison that this line here, which was the southern end of Lincoln-Douglas, was straightened across all the way, as you see on the large map, and this line was brought to North Royal, so that it became straight as appears on this map, and this area of South Jackson right here came straight across in this fashion (indicating throughout).

The Court: Well, that straightening out of the south line of Lincoln resulted in putting some of Lincoln's territory into Whitehall, didn't it?

Mr. Rice: That is correct. We straightened it here and there, and straightened that line there (indicating throughout).

The Court: All right, sir.

By Mr. Rice:

Q. Mr. Huckaba, does that represent your best professional judgment as to a fair and equal distribution between

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those various schools? A. It does.

Q. Is it a racially motivated plan?

Mr. Williams: That is objected to as calling for a conclusion.

The Court: That would be a fact, wouldn't it?

Mr. Williams: If Your Honor please, yes, but he would be stating a self-serving conclusion as to the fact.

Mr. Rice: We withdraw the question.

The Court: The question is withdrawn.

Mr. Rice: I know nothing else to add about the elementary zones, Your Honor.

The Court: All right, sir.

By Mr. Rice:

Q. Mr. Huckaba, I hand you a map, which is identified as Junior High School Districts, and I will ask you if that is the districting map which the City of Jackson proposes for its junior high schools? A. It is.

Q. I will ask you if that map was prepared under your supervision and direction? A. It was.

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Q. I will ask you if the same factors which affected—upon which you based your elementary school zoning were considered and you used as your determining basis in the creation of these zones? A. They were.

Mr. Rice: I offer that as Exhibit No. 10.

The Court: All right, sir. Right here we may get in trouble on the exhibits, because the map being offered showing the proposed zone lines for the junior high schools does not have accompanying it additional maps showing school populations; so if we don't introduce the big map which has been used for testimony, where will we be on that?

Mr. Rice: Well, that is true. May I ask the Court, then, to permit me to do this, to introduce the large

easel map as Exhibit No. 11 in the case, and that we be permitted to withdraw it long enough to make a copy of it?

The Court: Yes, sir. We will admit in evidence, then, Exhibit No. 10 and Exhibit No. 11.

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(Whereupon, the documents referred to were accordingly marked Exhibits No. 10 and 11 respectively, and same will be found among the exhibits hereto.)

By Mr. Rice:

Q. Now, Mr. Huckaba, I direct your attention to the large easel map once more, upon which I have just placed some red lines, and I will ask you if these red lines appearing upon the large easel map are the same as the lines upon Exhibit No. 10? A. That's correct.

Q. When I refer to the large easel map, I am referring to Exhibit 11.

Now, will you tell me what the red markers are on the large easel map? A. The junior high schools, location of the junior high schools in Jackson.

Q. Now, beginning on the left of the map and referring to Exhibit No. 10, which is your junior high map, the marker on the left is what school? A. Tigrett Junior High School.

Q. And the one in the center? A. Merry Junior High

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School.

Q. At my request, and I think at the request of the plaintiffs, did you compile a capacity enrollment and number of teachers' list for each of those schools? A. I did.

Q. I hand you a paper on which are written those figures, and I will ask you if they were prepared under your supervision and direction? A. They were.

Q. And if they are correct? A. They are correct.

Q. Will you read them into the record, please? A. Tigrett Junior High School capacity, seven twenty-five; enrollment, six seventy-eight; teachers, twenty-six. The new Jackson Junior High School—capacity, six fifty; enrollment, four hundred one; teachers, sixteen. Merry Junior High School has a capacity of seven hundred; enrollment, seven hundred three; teachers, twenty-three.

Q. Now, is there any construction contracted for in regard to any of these schools and, if so, what? A. There is construction to be made at Merry Junior High School.

Q. What are you to do there? A. Add four additional class rooms.

Q. Have bids already been taken on that? A. Bids are being taken today.

Q. They are being opened at home, in Jackson? A. That's correct.

Q. What will be the capacity of those four class rooms? A. Those four class rooms should be able to handle approximately thirty students per class. Of course, that varies. Sometimes you put a few more and sometimes a little less, depending on the enrollment. But I would say thirty.

Q. Now, do you think that the districting map that you have there in your best opinion will provide a maximum usage of our facilities and the class room availability and the teacher and class load? A. I think it will.

Q. Is there a certain element of trial and error in con-

nection with this as long as we have a transfer provision such as we have? A. That's always the case.

Q. I would like for you to point out to the Court the

—37—

location of a junior high school building which we are not now currently using. A. This is the old Jackson Junior High School.

Q. Is that a usable building? A. It is.

Q. A junior high school building? A. Yes, it is.

Q. If that building had been allowed to continue in use, from where would it have gotten the bulk of its students? A. It would have gotten the bulk of its students in the vicinity of the school building.

Q. I will ask you if the southern area of Jackson would have been embraced in that? A. I think it would have.

Mr. Rice: Now, I believe the Court just wants this one issue at this time.

The Court: Yes, sir.

Mr. Rice: I believe that is all we have.

Mr. Williams: May it please the Court, I take it it will not be considered out of order if I use this rather unwieldly document here at the podium?

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The Court: Go right ahead.

Cross-Examination by Mr. Williams:

Q. Mr. Huckaba, I believe you indicated that these particular zones were prepared under your supervision and direction? A. That's correct.

Q. That was not true as to the original zones submitted

to this Court, was it? A. I think that all of them were prepared under my direction.

Q. Didn't you testify at a previous hearing in 1963 that the zones which you submitted, elementary zones which you submitted to the Court at that time were prepared by the City Planning Commission? A. That's under my direction.

Q. Was under your direction? A. That's correct.

Q. I believe you have indicated that this map that has been introduced as an exhibit shows the location by an individual dot of every school child in the City of Jackson from birth up through eighteen years of age, is that cor-

rect? A. That's correct.

Q. That includes the pre-school children and everything? A. Yes, sir.

Q. It does not purport to show their present assignments, but simply their place of residence, the zones in which they reside? A. That's right.

Q. Have you brought with you information as to how many respective white and negro children reside in each zone? A. The number of white and negro children in each zone?

Q. Yes. A. I don't believe I have that information.

Q. You don't recall that we requested that information in our subpoena? A. No, I don't recall.

Q. So that we would have to undertake a rather laborious task of counting these dots in order to receive that information, and then we could not be certain, because you have included on here dots for children of an unknown number, ages one to six, in each zone, is that correct, sir? A. That's right.

Q. Would you explain to the Court how you related this

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to pre-school capacity, that is the children from one to six? A. From one to six?

Q. Yes. A. Well, I, of course, have the enrollment of the schools at the present time.

Q. So that you then did not use—you did not use these figures that you have—this map, you did not use this survey information in establishing your zoning plan, did you? A. Yes, sir, I used that map.

Q. Well, then, you can furnish us then how many children there are in each zone who are negro and white, can't you, if you did? A. The total number of people in each zone?

Q. What I am driving at, Mr. Huckaba, is for you to explain, if you please, sir, to the Court, what method or process you used in relating school enrollments, not school enrollments, the location of the children to the capacity of the schools in formulating your school zones when you don't know how many children there are in the respective school zones? A. Well, there was a consensus taken of

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the pre-school children.

Q. But I just asked if you could furnish information as to the number of children actually in school in these school zones, and you said you didn't have that information? A. No, I don't.

Q. So, then, there was some guess work involved in this, then, wasn't there, sir? A. Well, of course, there is always the problem of knowing just how it is going to turn out. But, according to the figures presented a while ago, it seems to have worked out very well.

Q. What figures while ago are you talking about? A. I am talking about the figures here of the capacity and class load on page 6.

Q. That's the replication? A. Yes, sir.

Q. Then, it is your opinion that based on the school enrollments that you had information that year in the schools that your zoning plan worked out rather well, is that correct? A. Yes, sir.

Q. And, consequently, and based on that, as a matter of

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fact, you substantially—well, as a matter of fact, you, up to the time that we filed our exhibit here, you had not intended to change that, had you? A. We had contemplated this change here from South Jackson to West Jackson.

Q. When did you first have that under consideration? A. We have had it under consideration for some time.

Q. Did you have it under consideration in 1963 when we pointed it out to the Court here? A. Well, we didn't consider it at that time, but we have considered it since.

Q. Did you consider it at any time during the year 1963? A. I, of course, considered it, yes.

Q. But you did nothing about it? A. No.

Q. Then did you consider it in September 1964—were you considering it in September of 1964? A. 1964?

Q. Yes. A. Well, I realized the situation that existed.

Q. Well, notwithstanding, then, you denied all these parents who lived in that area, in the northern portion of

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South Jackson zone, admission to Alexander School, didn't you? A. I did, with the exception of some.

Q. You granted exactly six of those, didn't you, six out of thirty-five, that's correct, according to the information in your replication.

Q. That's correct.

Mr. Rice: What was that question?

Mr. Williams: He granted six transfers of negro students in that little north portion of South Jackson zone in September of 1964.

Mr. Rice: If the Court please, are we going into that question?

The Court: I think Mr. Williams is seeking to show the history of why this South Jackson area was taken out of South Jackson and put into West Jackson. But we certainly want to stick to the gerrymandering issue, because, as we said at the pre-trial conference, we can only talk about one thing at a time.

Mr. Williams: Yes, sir.

Q. But you did not then seriously have that under

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consideration at that time, did you, Mr. Huckaba? A. I have had it under consideration, but not to the point of making any recommendation at that time—at that point.

Q. And so these children were required to go to South Jackson? A. That's correct.

Q. Now, except for that little change in there, and except for bringing this western-most line of the Whitehall School over to Royal—that is North Royal Street, isn't it? A. Yes.

Q. And straightening out this little northern boundary on the western-most edge of the Whitehall area, your present elementary zoning map is exactly the same as it was, is it not? A. I believe that's correct.

Q. And those changes were made after the minimal changes that were made—the minimal changes that were made were made after the plaintiffs filed in this case their gerrymandering exhibit, which was during the month of May, that's correct, is it not? A. No.

—45—

Q. Well, at least you did not file them with the Court? A. No, we didn't file them with the Court.

Q. You hadn't submitted them to the plaintiffs prior? A. No.

Q. You knew that we were preparing an exhibit or attempting to formulate information to attack your zoning plan, did you not? A. I didn't know what the nature of it would be.

Q. Well, when we had the pre-trial conference here last September, didn't you derive an understanding that the Court had given us permission to examine your records for the purpose of determining whether or not your zones were gerrymandered? A. That's correct.

Q. Did you feel that it was proper, if you had intended all along to change these zones, to wait until we had spent all our time and money trying to formulate evidence based on the old zones, and then spring a surprise on us? Do you feel like that was fair?

(No response.)

Q. Well, notwithstanding, the true fact is that you say

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you never intended to make any change here until after we filed our exhibit demonstrating to the Court beyond any question the gerrymandering? A. I don't think that is necessarily true.

C. J. Huckaba—for Defendants—Cross

Q. Necessarily, or unnecessarily, is it or is it not true? A. It is true.

Q. Now, Mr. Huckaba, talking about main street lines, I think you said this line was running along Poplar Street, is that correct? A. That is right.

Q. This southern boundary of West Jackson Elementary School runs along Poplar Street from the west? A. That's right, Highway 70.

Q. Is that Highway 70? A. Yes, sir.

Q. Now, when that gets in here—when that gets in—well, the name of that street is obscured on my map, but when its gets into this street where it takes a northern turn—incidentally, what is the name of that street, do you recall? A. I believe it's Johnson.

Q. When it gets into Johnson Street, it encounters a

"V" there with Lafayette Street and Main Street, does it not? A. That's correct.

Q. And Lafayette Street continues right on across town, doesn't it? A. Yes.

Q. And Main Street follows the "V" for one block, and then continues straight across town, isn't that correct? A. Yes.

Q. And are not both of those main streets? A. Yes.

Q. And, as a matter of fact, Main Street goes right by the County Courthouse as various other buildings of municipal significance, does it not? A. That's correct.

Q. Was there any more or less logic in drawing the zone lines for South Jackson Elementary School, in taking that abrupt northward turn along Johnson Street, which is a side street, is it not? A. Johnson Street has quite a bit of traffic.

Q. Well, at least it is not a through street, is it? A. Well, it cuts off to Campbell.

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Q. It dead ends at Deaderick? A. Yes. But just beyond that is Campbell, and it is a thoroughfare.

Q. But you had a main street you were already on here, didn't you? A. Yes.

Q. And wouldn't it have been at least as logical, if, as you say, thoroughfares are natural boundaries, were zoned, to continue right along into Lafayette or Main Street right on across town to establish this South Jackson Elementary zone? A. I had to take into consideration the capacity of the schools.

Q. All right, sir. A. The capacity of West Jackson School.

Q. All right. Now, West Jackson School, I believe your exhibit shows—West Jackson School last year, 1964-65 had a capacity of five hundred and an enrollment of four hundred and nine? A. That's correct.

Q. Ninety-one under capacity? A. Yes, sir.

Q. And I believe you reversed our colors. We had the

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white people blue and the negroes red, and you have the white people red and the negroes blue.

The Court: You don't read any significance into that?

Mr. Williams: If Your Honor please, I am not prepared to say.

Mr. Rice: I might say to the Court we have to make that map over, and if you have a preference, we will change it.

Mr. Williams: Well, the only question in my mind, and then I have bandied this—the only question was, did they do this to confuse us and throw us off the track?

The Court: All right. Now, Mr. Williams, you have asked the witness the enrollment and capacity in West Jackson. Ask him the capacity and enrollment in South Jackson for purposes of comparison.

By Mr. Williams:

Q. The enrollment and capacity in South Jackson is five twenty-five, is it not, as of last year? A. Yes.

Q. And the enrollment was five forty-four, was it not? A. Yes, sir, that's correct.

Q. Now, right while I am on that point, Mr. Huckaba, you have seen the exhibit that was prepared by our expert and filed with the Court here, have you not? A. I have.

Q. Is the file copy here and available, if Your Honor please?

The Court: You may use the Court's copy.

Mr. Williams: Well, I would like to have something marked for identification, and I don't mind using mine.

The Court: All right. Mark it for identification.

(The document above referred to was marked Exhibit 12, and same will be found among the exhibits hereto.)

Mr. Rice: I want to point out to the Court the first line in the introduction of this exhibit, which would be right after the fly leaf, and in which it is

stated that these seven exhibits have been designed

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to discover if the school zone lines of Jackson, Tennessee, City School System have been so drawn to obstruct the racial integration of city schools. I submit to the Court that that is not the law; that these exhibits are completely apart from the law and that they are seeking to attain a different end—these exhibits are designed seeking integration—that is not the law, and I think that these exhibits should not be used for any purpose in this proceeding.

The Court: Objection overruled.

Gentlemen, I think it is about time for a recess. We will give you fifteen minutes. Be back at 11:10.

(Recess.)

The Court: Go ahead, Mr. Williams.

By Mr. Williams:

Q. Mr. Huckaba, you have a copy of this document, which is marked Plaintiff's Exhibit No. 12 for identification. A. No, sir.

Q. Will you glance at this exhibit, and see if this is the same thing that you received? A. Yes, sir, it looks like it.

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Q. Now, this document does purport to reflect by dots and various overlays, each dot representing respectively a negro or white child, depending upon whether it is red or blue—they reflect the residence of children who are assigned to the respective school and the respective overlay involved, isn't that what it purports to represent? A. Those that are assigned?

Q. Yes. A. I am not sure about that.

C. J. Huckaba—for Defendants—Cross

Q. You haven't studied that? A. I haven't had an opportunity to give a thorough study of that. I haven't had it but a short while.

Q. Well, doesn't it appear to you that these dots and the overlays included in Exhibit 4 of this document, for example, appear to represent the residence of white children who are assigned to the school zone of Whitehall Elementary School? A. That's what it states.

The Court: I believe the exhibit speaks for itself.

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Mr. Williams: All right.

Q. What I was going to ask you is if it isn't true that if you look at Exhibit 2 of this Plaintiff's Exhibit, which is Exhibit No. 12 for identification, you find outside the zone of West Jackson and in the zone of South Jackson one, two, three, four, five, six, seven, eight, nine—one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen and that other one down there at the bottom, approximately fifteen red dots representing five children in each case who reside in the area of the South Jackson zone, isn't that true? At least if this exhibit is true, that's what it reflects? A. Yes, if that exhibit is true.

Mr. Rice: I believe if he is going to cross-examine on the exhibit, he ought to prove the exhibit first.

The Court: I believe you are getting a little ahead of yourself, Mr. Williams. I believe you are cross-examining him on an exhibit which has not been authenticated and cross-examine him about something that speaks for itself.

Mr. Williams: All right, sir.

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Q. You are aware that there are a large number of white children residing in the South Jackson zone who were attending West Jackson Elementary School, were you not? A. Yes, I am aware there are some.

Q. Would you say there are as many as approximately seventy-five, as shown by this exhibit? A. I wouldn't know.

Q. Would you say there were more than fifty? A. I wouldn't know.

Q. You mean you haven't kept any records on that at all? A. I am just trying to re-assign pupils in relation to school and capacity.

Q. Well, that's exactly what I am asking you. Will you explain to the Court how you assigned anybody with regard to the capacity of a school, when you cannot tell and don't know how many white children there are who are down here in this zone, who have been attending West Jackson? A. I think we indicated how many were assigned, and how many were refused in a formal record.

Q. No, sir. As a matter of fact, that replication deals only with applications for transfer last year, does it not? A. This year, this school year, the beginning of this school

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year.

Q. And does not reflect the number of transfers you granted last year, does it? A. No. This replication doesn't. I think that we have here on page 6 here—

Q. Well, these figures that you have given here deal only with negro children, don't they? A. Yes, that's true.

Q. Well, you do have some figures that purport to give the application for transfer last year for white children in

the replication that was filed in November and that was —well, I have been wasting time. I am sorry, Your Honor.

You said seventy-six children last year alone presented themselves for registration here in this West Jackson School, is that right, and only eight of the seventy-six were of the negro race? A. I need to see the record.

Q. All right. Let me hand you here my copy, and I assure you I haven't changed it at all. That's my copy of the replication that I received from the Clerk on the 13th day of November, 1964, and I will ask you if that appears

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to be a correct copy of the replication filed by your counsel here, if you will just glance through it, sir.

Mr. Rice: May it please the Court, we are back on transfers, and I didn't go into that, because I did not understand that to be an issue.

The Court: Well, we can't see, Mr. Williams, where the line of questions you are directing at the witness now have anything to do with the alleged gerrymandering of the proposed districts. I would think it would be much closer to the point to examine the witness as to why, in view of the fact that the record shows that West Jackson Elementary School has an under-enrollment, and South Jackson has, to some extent, an over-enrollment. They didn't bring that south line of West Jackson over to the railroad enough, or something like that to take more out of South Jackson and put into West Jackson.

Mr. Williams: That's what I was coming to.

The Court: We have a limited amount of time.

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Mr. Williams: Well, I was trying to bring out this point before I got to that.

Q. You will concede, will you not, Mr. Huckaba, that of the four hundred and some enrollment, that you do have in West Jackson, a substantial number of them are white children who have already transferred out of the South Jackson School zone last year, and the year before? A. There are some.

Q. Well, that's the thing that worries me. That's the reason—counsel belabors me about it—but that's the reason I have to get these facts.

The Court: What we are trying to determine is whether or not the elementary zones as proposed by the School Board are gerrymandered, and it seems to the Court that what you have to do—of course, you have a lot of questions involved—but the beginning point is to consider where people live and the number of students that would attend the school—

Mr. Williams: (Interrupting) School capacity, he said, if Your Honor please, and that is what I am

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driving at.

Q. Do you have any idea at all as to how many of these students that are attending West Jackson are actually residing in the South Jackson zone, under your transfer policy? A. I think that that's reflected in this information that we furnished.

Q. You mean in this replication?

Mr. Rice: May it please the Court, I have to interrupt again at the risk of being called down. Now, the Court's initial order permitted every student enrolled in each school to continue there until they graduated. Now, that has been two years, so we still have four years in those schools, and there is no way we can know that.

Mr. Williams: I am trying to bring out whether or not, as Mr. Huckaba says, he considered these various factors, and one is school capacity and school enrollment. I didn't attempt to restrict adversary counsel's examination in this matter.

The Court: We are trying to deal here with the question of gerrymandering. Now, it looks like to me you can get it more directly, and the Court suggested to you just by way of example, because it

occurred to the Court in view of Mr. Huckaba's testimony, that West Jackson has an under-enrollment and South Jackson has an over-enrollment. Why wouldn't it have been more logical to have drawn the south line of West Jackson to bring it over to the railroad and then put some of South Jackson in West Jackson?

Mr. Williams: I submit to the Court that perhaps that occurred to the Court because I was trying to develop that—

The Court: Why didn't you just ask him the question direct; that's what we are interested in.

Mr. Williams: All right.

Q. Can you state to the Court any reason why you did not bring that line directly across there—

C. J. Huckaba—for Defendants—Cross

The Court: Or if not directly across, bring it over to the railroad and follow the railroad up and carve off that corner of South Jackson and put it in West Jackson?

The Witness: I would like to say that, of course,

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in my study and analysis of these students when they locate, I took the lines as they were, and that, in my judgment, was the best way to equalize the load between the schools, and with this addition here will give relief to the South Jackson School, and we have to watch to keep from overloading in the West Jackson School. Now, there is a relationship between South Jackson and Washington-Douglas, and there are pupils living in the Washington-Douglas area as it is on this map.

The Court: You mean South Jackson, don't you?

The Witness: There are students in the Washington-Douglas area, Your Honor, because of the fact they were allowed to remain in the South Jackson original order, and there are still some in South Jackson. But now with the new students, since there is room for them in Washington-Douglas, we are directing the first grade people to Washington-Douglas area to further give relief to South Jack-

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son. But since they were granted the privilege of staying there, we have allowed them to stay there, even though they are over in the Washington-Douglas area.

C. J. Huckaba—for Defendants—Cross

By Mr. Williams:

Q. You are talking about new negro students now, aren't you? A. I am talking about new students.

Q. But aren't you talking about negro new students? A. Yes, sir.

Q. As a matter of fact, Washington-Douglas, like South Jackson, remains totally segregated negro school? A. They are all negroes.

Q. Now, you say you have been directing students to Washington-Douglas to relieve South Jackson? A. Yes, the new ones.

Q. You are a hundred and twenty-three under capacity at Washington-Douglas? A. That's about correct.

Q. Well, you are also a hundred and forty-eight under capacity at Parkview, are you not? A. Yes, we are under capacity there.

Q. Parkview is further west geographically toward

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South Jackson than Washington-Douglas, is it not? A. That's correct. It looks like from the map.

Q. Most of the negro homes you show on your map as residing in this southern area here—let's see. I believe yours are blue. They reside closer to Parkview—

The Court: You have that wrong. The negroes are red.

Mr. Williams: The negroes are red. All right, sir.

Q. You have a substantial number of your negroes that reside closer to Washington-Douglas than they do to—closer to Parkview than they do to Washington-Douglas, don't they? A. That's true. But that's not the only case.

C. J. Huckaba—for Defendants—Cross

Q. Why are you directing them to go to Washington-Douglas School? A. Washington-Douglas area.

Q. You say you are directing some negroes in the South Jackson area to the Washington-Douglas area because they are in the Washington-Douglas area, is that correct? A. No. I think you misunderstood. The Court order permitted, when we drew the lines of the zones, permitted those that

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are in the new zones, that's approved by the Court, to remain at South Jackson School in the other grades all the way through, allowed them to remain there, and they are still there, unless they have finished the sixth grade, if they were there to begin with. Now, then, the new ones we are directing to Washington-Douglas in order to give some relief here and take up the capacity of Washington-Douglas.

Q. I see. All right, sir. I misunderstood you.

Do you know how many children are involved in the change that you made up here in this little goose-neck in South Jackson? A. I think the map speaks for itself.

Q. No, sir, the map does not speak for itself, because it involves six years of children who are not even in school yet. I am talking about as of your present enrollment—do you know how many are involved? A. I would like to suggest that we are not only concerned with the students now, but we have to think about the others coming along, and we need to get the zones fixed so we feel we can handle them as we come along. Now, that, of course, enters into the picture with these new areas that have been added to the city.

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Q. Well, as a matter of fact, have you counted all these children on here? A. I haven't counted everything on there, but I think the map speaks for itself where they are.

Q. Mr. Huckaba, you are Superintendent up there? A. Yes, sir.

Q. And you are proposing this map to the Court as one that you have drawn as an expert? A. I have had it drawn, under my direction.

Q. But you haven't studied this map yourself? A. Yes, I have.

Q. And you are saying to the Court that it ought to be approved because you used educational consideration such as location of school, location of pupils, natural geographical boundaries, et cetera, capacity and size of school—that you used those factors and took them into consideration in formulating this map? You are saying that, aren't you? A. Yes.

Q. Will you tell the Court how you could use such factors without knowing what the factors were? A. Well, I think we can see from the map how many.

Q. Well, you can't see. I can't tell from the map how

many children there are up there. I could take an hour and count them, but you don't have those figures? A. I didn't count them.

Q. Would you be surprised to know that your little change right here affects only approximately thirty-five negro children, including those who came to you last year and tried to get some relief? A. I wouldn't know about that.

Q. Would it surprise you to know that the little change you made right here and the little change you made right here (indicating) both, together, affect a total of only about twenty children? A. Well, the map speaks for itself.

Q. Out of a school system of nearly eight thousand? A. The map speaks for itself, I think.

C. J. Huckaba—for Defendants—Cross

Q. But you don't actually know how it affects the children who are presently enrolled? A. In my judgment, I think this is a well balanced program, Mr. Williams.

Q. But your judgment has to be based on something. A. There has been a careful study made of the map and the factors and where they are, and it is my judgment, on the

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basis of the figures we had as of this year, that the changes made would give the relief that is needed, along with the fact that the new students coming in to what is now Washington-Douglas, and I propose to assign them to Washington-Douglas, so as to give the needed relief that we need in the South Jackson School.

Q. Mr. Huckaba, let's go on to something else, and then I will come back to that.

The Court has called attention to the fact that in addition to two main highways, two main streets or highways, you also have a railroad track running up diagonally through this South Jackson zone even under your amended plan. Did you give any consideration to that at all? A. Yes.

Q. Did it occur to you that these negro children in this area would be assigned to West Jackson Elementary School if you followed the railroad track? Did it occur to you that the negro children in the northwestern portion, the little "L" that you have, and still have in the South Jackson zone, would be assigned to West Jackson School, a formerly white school, if you either followed Lafayette or Main and came to the railroad track and followed it and went on

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across the railroad track? Did that occur to you? A. They would if they chose to go there, if that was the boundary. I didn't draw the boundary that way. I think if someone else had drawn it, they might have drawn it different, of

course. But in my judgment I felt like this was the map and the zones as they should be to take care of the pupil load in our schools.

Q. Mr. Huckaba, will you observe how that little "L" shape follows the white population and excludes the negro population from the West Jackson zone there. Does that appear to be true? A. It's my considered opinion, if you bring that line across there to the railroad, then there is a possibility, a strong possibility that we would overload West Jackson and then we would have an underload in South Jackson School.

Q. Well, you already have an overload at South Jackson now. A. Just a little.

Q. Sir? A. Just a small amount.

Q. But, as a matter of fact, you don't know how many children would be involved, if you did bring that line

across? A. Well, looking in the map, I have some idea, certainly.

Q. You have some idea from the map? A. Yes.

Q. All right, sir. Each dot on the map represents one child? A. Yes.

Q. If the Court will permit me, I think it's obvious, Mr. Huckaba, can't you see, that this is one of the most sparsely populated areas on this whole map either by white or negro children, except for these few negro children over here in the corner that you cut off with this "L"? A. That's a downtown area there, most of it.

Q. Yes, sir. And you have under capacity over there of nearly a hundred. A. We will have more, though, when we come back up here (indicating). Why overload West Jackson and underload South Jackson?

Q. But you have on this map your pre-school population for six years? A. But I again say that we have to consider these zones with the idea that we are hoping this will be the zones that remain and not have to change every year, have to come and change our boundary lines.

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Q. Mr. Huckaba, in looking at that map, don't you see that you don't have more than about a hundred students living in there, even counting the pre-school children that you have in there for six years? You projected this six years ahead? A. Yes.

Q. And you still don't have a hundred children, and you have a hundred under capacity over there? A. But we have to take into consideration this that we have brought in.

Q. Well, Mr. Huckaba, let's go on to something else.

Going up here in the Washington-Douglas—no, the Parkview zone and the Lincoln zone. Do you have any explanation to the Court as to why this zone follows so religiously the pattern of the negro population and the Parkview follows nearly as religiously, as far as it can, the pattern of the white population there? A. You are talking about Parkview.

Q. Red on your map is negro? A. I am talking about the schools. You are talking about Parkview.

Q. I am talking about Parkview and Lincoln Elementary.

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This is Washington-Douglas, is it?

The Court: You are all confused, Mr. Williams. I think you are trying to compare Lincoln and Whitehall.

Mr. Williams: I am very sorry.

Q. Would you explain why the Lincoln zone follows the pattern so obviously of the negro population and the Whitehall of the white population? A. One of the big factors is the capacity of the two schools. Whitehall is an old school built a number of years ago. Whitehall just simply doesn't have the class rooms and the size class rooms that the more modern schools have, and we have just about got Whitehall to capacity there. Lincoln is one of our largest schools in capacity and class rooms.

Q. Well, Lincoln is two hundred and three under capacity, is that right? A. I think that's right, as I recall.

Q. Well, why, then,—haven't you got some main streets up here in the Lincoln zone, Mr. Huckaba? A. I don't think so.

Q. What about Lane Street here? A. Lane Street is

way on up there.

Q. What about this street (indicating)? A. I don't think there is a large flow of traffic on there.

Q. Would you say Jackson Street is a main street? A. Yes, Jackson is one, and many people travel Preston.

Q. But you admit that Jackson is a main street? A. I think, then, again, you are going to add more, if you are going to bring the line down there, you are going to take—are you talking about Jackson?

Q. I am asking you whether or not it would not have been feasible to run your eastern line for Lincoln down to Jackson Street, so as to relieve. You say Whitehall is an old school and up close to capacity, and why not include these white children down there in north of Jackson Street in the Lincoln zone? A. Well, it seems to me that there was no need of making any unnecessary change of it when this can be handled in the present status.

C. J. Huckaba—for Defendants—Cross

Q. When talking about West Jackson, where we had a situation where colored children had to be moved to West Jackson, you said you couldn't do it, because you had to look to the future. Now, what are we talking about, the

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present or the future? A. We are talking about the present and the future.

Q. We are talking about the present and the future. All right. Then I will go back and ask you why it is that we can't run this line across here based on your present enrollment and put these negro children over in West Jackson School? A. That's not the way I did it.

Q. Well, it would have been more logical to do it that way. A. No, I wouldn't say so.

Q. Why not? A. I just think that the lines I have drawn are, in my judgment, the best for the overall capacity and overall program of the schools in Jackson.

Q. But you can't give the Court a single figure related to school capacity, location or residence of the child that supports that judgment, can you? A. Supported by the map, and it speaks for itself.

Q. This map is the way you support it? A. Yes.

Q. And by the figures in your replication that you sub-

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mitted showing the capacities of the schools? A. That's right.

Q. Let's put it this way: If you had brought the northern boundary of Whitehall down and run it over along Jackson Street, it would have zoned some children here, whether they be white or negro, into Lincoln School, which is two hundred under capacity, and would have relieved Whitehall, which is very close to capacity, would it not? A. Yes.

Q. And Lincoln, however, is all negro, that's true isn't it? A. Yes, that's correct.

Q. And these children who would have gone into the Lincoln zone would have been mostly white people? A. There is another factor that I think needs to be brought in at this time in regard to that. The City of Jackson has extended its limits northeast, north and northwest. There is bound to be expansion and building going on down there near Lincoln School, and you have to take that into consideration when you plan a long-range problem.

Q. Yes, sir. And how many children are involved in that?

A. Well, that, of course, remains to be seen. But we have every reason to believe there is going to be development out there.

Q. You have reason to believe they are going to build subdivisions out there? A. I would say they will. Now, I don't have any definite information on it, but I would assume that the City of Jackson is expanding its limits, and that would encourage it.

Q. You don't have any figures on that now, do you? A. No, sir.

Q. And you do have a school construction program, do you not? A. Yes, sir.

Q. And when your schools reach their capacity and you have no ability to take care of children by changing the zones, you do intend to build new schools? A. Yes.

Q. You have one on the planning board now, haven't you? A. No. We have an addition, if that is what you are referring to, an addition to Merry Junior High School.

Q. Here is a main highway, Lexington Street running right through the Whitehall zone, which you have ignored, that's correct, isn't it? A. Yes.

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The Court: What is your point in that connection, Mr. Williams? In other words, what I am trying to suggest to you is when you direct questions to the witness, direct them to bring out something that you think is really going to be pertinent. The fact that that street does go through there, would that suggest to you that you should have brought Washington-Douglas up to that? Is that what you have in mind?

Mr. Williams: Well, if the Court please, I am not sufficiently expert myself to suggest to him what he should have done, but I am simply trying to bring out that he did not consider it as a factor, which he says he considered, in drawing this zoning plan, which supports our contention that the zoning plan shows on its face and all the Court has to do is look at his own exhibit and his own colors. Of course, this is a matter of argument, and I hadn't intended to get

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into it at this point, such as this "L" in the Washington-Douglas area going around the white residents zone.

Q. Incidentally, Mr. Huckaba, in connection with that Washington-Douglas, it, likewise, is under capacity, is it not? A. That's right.

Q. I wonder if you could explain why you went at Belmont Avenue, the zoning line for Washington-Douglas, why you made a sudden turn to the north there? A. We are under capacity at Parkview School.

Q. You are under capacity at Parkview? A. Yes, sir, the enrollment is under capacity.

Q. So that you could have extended that zoning line further to the west, couldn't you? A. No, not and take

into consideration the people living back this way, Mr. Williams.

Q. Do you know how many people there are living back this way? A. We have a census that has been taken that indicates how many people live in this new area here. This new area here can speak for itself, and there are a lot of people living in this new area that has been recently taken

—77—

in.

Q. Well, you haven't made a census out there, have you? A. There has been a census made.

Q. Incidentally, who made that annexation? A. The City Commission.

Q. The City Commission is one and the same as the School Board, is it not? A. That's correct.

Q. And that annexation was made as of May 19th, 1965? A. Yes.

Q. And when was this exhibit filed with the Court? A. This exhibit was filed as of today.

Q. No. I am talking about the replication that was forwarded that contained those exhibits originally—May the 19th, 1965, filed with this Court. On the same day the Board of Commissions, which also constitute the School Board, suddenly decided to annex this area to the east? A. The Commission acted on that previously, and it took thirty days for it to become effective.

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Q. When did they act on it? A. Approximately thirty days before.

Q. This area that has been annexed is primarily a white area? A. Yes.

Q. Is the area in the north projected subdivision that—then, when you testified before that there were some con-

centrations in the north, the northeast and the northwest that would be brought in under this annexation, what you meant was that actually the City is annexing some land and there is going to be some private development, you hope, up there, is that right? A. That has been the trend.

Q. But, actually, it is all vacant land, just like the bottom land to the south, isn't it? A. No. It is land that can be developed.

Q. But it is vacant land, isn't it? A. It hasn't got homes on it yet, but certainly this can be developed into home residential; whereas, this bottom land would be difficult.

Q. Would you explain why you attempted to vaguely suggest to the Court that there were people and school children

up there right now who would be annexed? A. What area are you speaking of?

Q. That northeast, north and northwest area. A. I said there is every strong indication that they would be.

Q. So that the only people you have annexed are the people here (indicating) that you have down here next to Parkview, is that right? A. Which area are you referring to?

Q. The only actual people now existing involved in the annexation is the little area of white people down to the southeast, just east of the Parkview School zone, is that right? A. No. There are people north and south too, way on out, almost to Interstate 40.

Q. Annexed? A. Yes, sir.

Q. How many are there? A. Quite a group of people in that area.

Q. When you say quite a group, approximately how many are you talking about? A. There is a considerable number. I haven't counted the exact number of them, but the census

has been taken, and that was taken into consideration. This

—80—

area here, a few of those people here are in school now in Jackson and, of course, there will be some changes in that, but those people are areas out there—Fair Oaks, and then the area just beside it, way on up north out the Humboldt Highway.

Q. When you say this area here, what area are you talking about? A. I am talking about the northern area.

Q. Well, in the southern area, aren't they practically all already enrolled in school now? A. No.

Q. They aren't? A. No.

Mr. Williams: May I have the document, please, sir, that I filed? May it please the Court, I mailed to the Court recently an exhibit relating to county students attending city schools, and I would like, if that is in the file, I can't seem to locate it—I wonder if the Court has it?

The Court: I will hand you our copy.

By Mr. Williams:

Q. Mr. Huckaba, did you get a copy of that document which we filed with the Court on the 25th of May, 1965? A.

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That came in just the last minute, Mr. Williams.

Q. Have you looked at it? A. I have looked at it just for a few minutes. I haven't had time to give a thorough analysis of it, but that appears to be somewhat in the neighborhood of correct.

Q. And that document shows the total county students in all the Jackson schools as being approximately three hundred and seventy-three white and approximately twelve

negroes. That's a total of three hundred and eighty-five. Is that about right? A. I would like to know if this is a count of the yellow cards in your survey?

Q. I believe it is. A. If that's the case, then that should be correct. If that's the count, that should be correct.

Q. All right, sir. Now, these county students who are presently attending your schools comprise largely people from these areas that you are talking about, the southeast and the north? A. And up this way (indicating).

Q. What about the southeast over here? A. There are

—82—

some, but it comprises mainly the people in the northern section, a new area that has been brought in.

Q. But, at any rate, you don't know how many those are? A. I don't know the exact number, but I know pretty well.

Q. Give me some idea, then, sir. A. I think I will have to look in another file that I have over there. I am not sure that I have it.

Mr. Williams: Could we furnish the witness, Mr. Huckaba, with that file?

Mr. Rice: If he wants it.

The Witness: According to some information that I gathered recently, there seems to be fifty-three yellow cards at Parkview School, which would comprise mainly people living out in this area here (indicating).

Mr. Williams: We show fifty. We are three under.

The Court: Mr. Williams, we don't mean to cut you off, but where does this line of inquiry have much to do with the alleged gerrymandering issue?

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Mr. Williams: School capacity, if Your Honor please. He is stating that he is considering the an-

nexation that they made in the east and the north and the northwest. What I am trying to establish is that he already has some of those children attending the schools and that included in the figures that he has given as to this year's enrollment, and he does not have any figures, and, therefore, has not considered any specific number of students otherwise.

By Mr. Williams:

Q. Is that correct, Mr. Huckaba? A. Mr. Williams, I have here approximately sixty-two pupils living out in this area—no, wait a minute—eighty-eight pupils. And in the new area, according to the figures that I received from the Principal, there about twenty-six of those from this area right in here (indicating). There are some from outside the city on out further. But, in my county, in the figures that I had the Principal to check on, this new area here, there

are about twenty-six of those people out of the eighty-eight.

Q. I am not sure I understand this now. There are eighty-eight people in the area, eighty-eight school children in the area, eighty-eight elementary school children, and you have twenty-six of them— A. That are in that area that are now presently in Parkview School.

Q. That are now presently? A. Yes.

Q. So, that at the most, you have to consider only some fifty students— A. Some sixty.

Q. Some sixty students in that annexed area. Well, wait a minute. Go back to your figures. I like figures, not estimations. How many students do you have in the area? A. In the new area?

Q. Yes. How many total students in the newly annexed area? A. I would say eighty-eight.

Q. Now, does that include the whole area, or just the

—85—

southeast portion? A. Just that portion.

Q. Now, you say of that number twenty-six are already attending school? A. That's the report that I have from the Principal. I asked him to count.

Q. But your yellow cards show that you have fifty-three? A. But they are further on out, outside of the city.

Q. So that leaves sixty-two pupils residing in this area whom you have to contend with along the eastern portion here? A. That was of school age. Of course, there are other children out there that are under school age that will be coming in later.

Q. But I am talking about what exists right now. That's true as regards what exists right now? A. Yes.

Q. Now, do you estimate that the pupils—do you have figures on the pupils that will live up in the northern area out in the county? A. Let's see. That would come—most of those are attending Alexander School; some West Jackson School.

Q. So, actually, as of the present, as of next year, in spite

—86—

of the annexation, you would not have any children coming from the annexed area who are not already attending school? A. In the northern area?

Q. Yes. A. Yes, we will have some.

Q. Well, how many? A. I don't have the exact figure on that.

Q. Do you have an approximate figure, sir? A. I would say that there are a large number of those pupils out there that are on the yellow cards, which puts them outside of the city limits, are in the Jackson city schools.

Q. They are already in the schools and would be included within the figures shown in the exhibits filed by the plaintiffs on May 25th, 1965, which we will introduce in evidence later. Isn't that correct? A. They would be primarily in this school, and some of them would be in West Jackson. There are a few indicated in Highland Park, but that's due to the fact that they moved into the area. I believe that's the case there. But in West Jackson there are some of these from this area here (indicating).

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Q. So that that four hundred and six enrollment that you have in West Jackson includes not only the white city transferees from the negro South Jackson zone, but includes seventy-one white county students who are attending schools there from way up north in the county? A. Some of them, but some of them are out west, and some of them are along the Bells Highway.

Q. And you have a hundred and sixty-nine white students attending Alexander School from the northwestern portion of the county, do you not? A. How many?

Q. Our figures show a hundred and sixty-nine yellow cards. A. Well, according to the figures that I received from the Prin[illegible]als yesterday, it's a hundred and twenty-two.

Q. Well, let's just say—I will accept your figures. It is at least a hundred and twenty-two, is that correct? A. Yes, I would say that.

Q. And that would constitute most of the children in this annexed area that you are talking about in the north, northeast and northwest, as of now? A. I would say that that would be the case. Of course, there are still people coming

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into Jackson beyond the new annexed area.

Q. But, what I am talking about it, as of the next school year, then wouldn't it be true, Mr. Huckaba, that as much as has been made of the annexation and extension to the city limits, it will not create any substantial increase in the number of students assigned anywhere next year, will it? A. Well, I would have to say, Mr. Williams, that that remains to be seen as to what some of these people are going to do.

Q. But, based on the information that you have now, it will not, will it, Mr. Huckaba? A. I don't believe I could say positively what they are going to do.

The Court: Mr. Williams, it looks to me we are getting hopelessly confused here. Of course, this whole subject is certainly easily capable of being confused, because there are so many factors that legitimately can be taken into consideration in setting up these zones. It looks like to the Court that

we might get some order into this hearing on this gerrymandering issue and get to the point more directly by considering specific areas in which it could be said on the face of it that there might be gerrymandering. Now, looking at Exhibit 1, which is the proposed elementary zones, I suggest to you, Mr. Williams, that you might examine Mr. Huckaba about the areas where the children in the negro school zone obviously live closer to a white school and how that can be justified. As, for example, in the north end of South Jackson. This is a point we have already talked about, in the north end of the proposed South Jackson zone. You have children living in that north end who live actually closer to West Jackson School.

Coming across the south end of the map, you have an area in the north end of Washington-Douglas where the children in that negro school zone live closer to Parkview. Coming on up the map, you have children who live in the south end of Lincoln, who live closer, actually, to Whitehall School. You have some chil-

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dren living in the west side of Lincoln, who appear to live closer to Alexander.

Now, while there may be some more sophisticated points involved than that, it seems to me that's the beginning point of the inquiry, to justify, if there is justification, the extent to which negro children are required to go to a school further from their homes where there is a white school closer. It looks to the Court that that would be the beginning point.

Mr. Williams: May it please the Court, I thought that was self-evident on the basis of the map that has been introduced.

The Court: Well, there are many factors involved here. Of course, distance is important, but it is also important in terms of loads, in terms of natural boundaries and so forth. There are a lot of factors that could be involved, and what the Court wants to know is what, if any, justification, and if you say that one particular boundary appears on the face of it to be wrong, where should it be put, and what effect would it have on the loads? It's very compli-

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cated, but it looks to us that that is the beginning point of the inquiry here.

Mr. Williams: Very frankly, I thought I was doing the best I could. I don't know how else—well, he

says—I asked him about that. I have asked him about the concentrations and he says it is a matter of his judgment, and he doesn't give any basis for his judgment. I asked him about points with regard to location of the schools, and he says it is his judgment, based on school capacity, so I started asking him about school capacity, and when it becomes obvious that the school is under capacity and this is not a factor, he says something about the children out in the county, and that's why I simply propose to establish, for purposes of this record, that there is nobody out there in that county now that needs to be given any consideration whatsoever.

The Court: Mr. Williams, I believe we have already discussed the situation about the north end of

the proposed South Jackson School zone, and whether or not it would be more feasible and more fair to run that south end of West Jackson over to the railroad, follow the railroad on up and thereby carve off what I will call the northwest corner of South Jackson. We have talked about that. Now, you have suggested there might be gerrymandering up here, because there are areas in the north end of Washington-Douglas which are closer to Parkview, and that might be. It occurs to the Court in that connection, though, that if you brought Parkview over a considerable distance, it would still be taking in a substantial white area; so that fact might indicate there was no intention to gerrymandering. In other words, you could bring Parkview over several blocks there and still take in areas where white people live. So that might be an explanation as to why

it is not gerrymandered. I don't know. Now, you also brought in this question about some of the south areas of Lincoln being closer to Whitehall, and suggested maybe you ought to move the Whitehall boundaries further north, I believe, running it along

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Jackson Street.

Mr. Williams: This was simply a point of inquiry. Why, when Whitehall, he says, is very close to capacity, he has the boundary up here following this racial residential pattern, rather than down closer to Whitehall, so as to exclude these children from Whitehall and put them in the Lincoln zone. Plaintiffs say Lincoln is overcrowded, but he says it is two hundred under capacity.

The Court: Well, we can only talk about one thing at a time. But, in this connection, I suppose you are asking if Whitehall is so near capacity and Lincoln is under, why you shouldn't bring the Lincoln line further south. And maybe that's right. I think it is obvious that people who were brought into Lincoln under that would be taken from Whitehall, which is right at their back door, and go considerable distance to Lincoln, which may be an explanation as to why they did what they did. But it looks like to me, in general, that's the type of thing we have to get at

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here.

Mr. Williams: But, of course, when you look at part of the picture like that, sometimes you fail to look at the total. For instance, you pointed out it is obvious that if you set that line south, that these children very close to Whitehall would be sent up to

Lincoln. But, Your Honor did not mention—what Your Honor has to consider is that these lines are not drawn according to—not drawn according to compact areas around a school, and Your Honor has illustrated that. Yes, it's true that these children should go to Whitehall, and the reason the result that Your Honor is talking about would obtain is because they have the Whitehall zone all the way down here to take care of the point of including only white children in Whitehall. If the Whitehall zone were drawn in a compact manner around this school, then all of these children in close proximity, including these negro children up here, who are likewise within a block or two of Whitehall, would then be afforded facilities

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to attend school in a white school, which is admittedly small, and that's why we worry about this. School capacity and enrollment is important, but it should not be used to say that you should have drawn a zoning line a certain way after you have already drawn it that way to take care of a racial matter. You see what I am driving at, Your Honor?

The Court: Well, we have made our suggestion and that is all we can do. You may proceed.

Mr. Williams: Well, I am going on to junior high schools anyway, Your Honor.

The Court: All right, sir.

By Mr. Williams:

Q. Mr. Huckaba, with regard to the junior high school zones, would you explain to the Court why you followed—well, maybe I ought to ask you this first: Does it appear to you that your zone for Merry Junior High School, which

was a formerly negro high school, formerly negro school, generally follows the pattern of the racial residential configuration there? Does that appear to you, sir? A. Those lines were drawn in relation to location of the school—

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Q. (Interrupting) I am sure the Court will permit you to explain, but the question I asked you can be answered yes or no, and I would respectfully ask you, sir, if you would, if you can, answer it yes or no. Does it appear that way to you? A. Let me ask you what the question was again.

Q. Whether or not your zone lines for Merry Junior High School appear to you to follow the racial residential pattern there, so as to include most of the negroes? A. The lines were drawn in relation to the capacity of the schools.

Q. But, as it actually appears, does it appear to more or less follow in a rather general way the pattern of the negro—

The Court: Do you think it is necessary to ask the witness that question? This Court can look at that map and that would be a matter of argument.

Mr. Williams: All right, Your Honor. I will then go ahead.

Q. Mr. Huckaba, I will ask you why it was drawn in that fashion, sir? A. It was drawn taking into consideration

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the three schools and their locations and capacities to handle our junior high school pupils.

Q. The location of the schools and their capacities. Can you tell the Court how many people you have living in here (indicating)? A. That includes the whole population.

Q. Mr. Huckaba, have you counted the number of school children that you have in the Merry Junior High School zone? A. The map speaks for itself.

Q. All right, sir. Do you know how many children actually of junior high school age, how many negro and white children of junior high school age now in school reside in the Merry zone? A. In which school?

Q. In the zone of the Merry Junior High School. A. How many now in the Merry Junior High School?

Q. No, sir. I am asking you if you know—you have shown on here with dots every child from age one through eighteen in that zone. You said you don't know how many dots there are. Now I am asking you if you know how

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many children there are of junior high school age that are now enrolled in some junior high school who live within the Merry Junior High School zone? A. I haven't made a count of that.

Q. Do you have that information for any of these zones? A. No, I don't have the number, but I do know from the location of the families as to which schools will serve these people in relation to the location of these pupils.

Q. Merry Junior High School, as of last year, is already three over capacity, isn't it? A. Yes.

Q. And that's consolidated with the high school? A. With Merry High School, yes. Merry High School is on the same campus.

Q. Well, it is in the same building, as a matter of fact, isn't it? A. Yes.

Q. You don't have that situation with either of these other two white junior high schools, do you? A. No.

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Q. And Merry High School is an all-negro school. There is not a single white child in any formerly negro school

in the City of Jackson as of now, that is correct, isn't it? A. That's right.

Q. When did you decide to build the addition to Merry Junior High School? A. We had it under consideration for some time.

Q. When was the decision made? Do you have anything in minutes on that? A. I don't have exactly in the minutes when it was decided, but it has been under consideration for some time, and the decision was made this spring.

Q. When this spring? A. I don't have the minutes exactly when it was decided.

Q. Mr. Huckaba, you forgot about my subpoena, didn't you? Did I give you the impression in the pre-trial conference that I didn't intend for my subpoena that I issued last year to be applicable at all? A. No, I wouldn't say so. I don't know.

Q. But, at any rate, it was just this spring that the School Commissioners concretely decided to add this addition to Merry Junior High School? A. Yes, sir.

Q. Would you say since March? A. I presume so. I don't know exactly the time, but I would say it has been under consideration for some time.

Q. But that was after you found out that Merry Junior High School was three over capacity?

(No response.)

Q. And you don't expect that any white children will attend that school, do you? A. That remains to be seen.

Q. Mr. Huckaba, that is what you said back in 1963 when I asked you that question. Now, we have had two years to see, and based on—you asked this Court for time to

desegregate so you could have experience, didn't you? A. Yes.

Q. And you draw conclusions based on experience as an educator, don't you, Mr. Huckaba? A. Yes.

Q. And in the two years that you have been operating the system, you haven't had any white children to enroll in negro schools under your liberal transfer provision,

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have you? A. No.

Mr. Rice: May it please the Court, we are arguing now. He is strictly arguing with the witness, and, of course, I have the time, but this lawsuit will go on forever at this rate. But he doesn't know, and he said so.

The Court: Well, he testified, and I think it is conceded by the defendants that there are no white students going to his four negro schools. That's not a fact that has to be established now.

Mr. Williams: I asked if he expects any white children to be enrolled in this new addition he is building, and he says he has no basis for arriving at a conclusion. This is cross-examination, if Your Honor please. Of course, time is important to me too.

The Court: All right. Objection overruled. Go ahead.

By Mr. Williams:

Q. Mr. Huckaba, based on your experience, aren't you

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justified in concluding, or wouldn't you be justified in concluding that no white children will be enrolled in that junior high school? A. Judging on the basis of what has

happened up to now, that might be the case. But, still, I don't know yet.

Q. So that you are building this addition to accommodate more negro children? A. We are building that addition there to take care of the situation more adequately.

Q. Where are the children coming from? A. They are coming from all parts of the city to that school.

Q. They will come from down here, and the few negroes that you have outside of this zone (indicating)? A. Yes.

Q. On the east and on the west? A. Yes.

Q. So that Merry Junior High School, under your zoning plan, will continue to be a totally negro school, based on your best estimate, won't it? A. I imagine it will be predominantly negro. Now, let me bring out a point, if I may.

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Q. You are entitled to that. A. The senior high school exists in the same building, the old part of the building, was built first, and the senior high school is growing in enrollment. We have maintained some of the ninth grade in the old part, but the tenth, eleventh and twelfth grades have to have room to move these people back into the new wing, in order to provide room for the senior high school, which is growing.

Q. Well, Mr. Huckaba, you are some two hundred and forty-nine under capacity over at the new high school over here, are you not? A. Yes, we are under capacity there.

Q. Well, I take it you are following a main thoroughfare route down here (indicating), is that correct? Were you following a main thoroughfare route on this? A. We were following the same route there.

C. J. Huckaba—for Defendants—Cross

Q. On this northeast line on your zoning? A. We followed the same line that we had in the elementary, the same streets.

Q. Well, Mr. Huckaba, why wouldn't it have been just as logical to draw these—see, that's the trouble we get in when I try to do it, Your Honor. I am not going to try. I

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will let the expert try it.

I will ask you this, Mr. Huckaba: Have your ever heard of the principle of feeding from grammar schools into junior high schools? A. The what?

Q. Feeding from elementary schools into junior high schools? A. I don't know what you are getting at, Mr. Williams—feeding?

Q. You are unfamiliar with that principle. A junior high school can accommodate students from more than one elementary school, can it not? A. Oh, I see what you mean. Yes.

Q. And the feeding system contemplates simply assigning students from certain elementary schools to certain junior high schools? A. Yes, I suppose.

Q. And doesn't that constitute a very convenient way of taking advantage of the respective capacities of junior high schools that you have and of their locations, because you can then consider the location of the junior high school in relation to elementary schools which it serves, isn't that

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correct, sir? A. That has something to do with it. Of course, the number of students that you have enter into that.

Q. But, assuming that you can adjust the matter appropriately—for instance, here you have one, two, three,

four elementary schools over here in the vicinity of West Jackson, and you have three here sort of grouped around it on the south, do you not? A. Yes, sir.

Q. Did you consider the possibility of drawing your zone line so that these three elementary schools, Washington-Douglas, that is the pupils zoned for them, Washington-Douglas, Parkview and Whitehall might be assigned to West Jackson? A. We took some other factors into consideration. Of course, this line here follows the railroad. We took also into consideration—of course, you have to go back to what you can accommodate. You have to give some consideration to distances. However, we can't follow that completely. We know that.

The Court: Just a minute. Going back to your question, Mr. Williams,—as we see the Merry Junior

High proposed lines, they would feed a large part of Washington-Douglas.

Mr. Williams: Yes, sir, except part of it—it is excluded.

The Court: But it looks like to the Court that the major part of Washington-Douglas, plus Parkview, plus Whitehall, would all feed into Jackson.

Mr. Williams: If Your Honor please, again, I must say to Your Honor, and this is the danger that I am getting into on this thing, and I probably ought to sit down. I am not making any proposals as of this time, because Your Honor moved this up from two to 9:30, and I had hoped to have a consultation with the people who know about this thing before I cross-examined this witness, and I haven't. So I would not like the Court to understand that any suggestion that I make to Mr. Huckaba on cross-exami-

nation is an expert suggestion on my part as to what should be done. I am just trying to find out whether or not he considered these things.

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The Court: The reason the Court asked some questions is that we thought we must have misunderstood you, because it did look like what the Court said was right.

Mr. Williams: Yes. It looks like he began to follow the system, but then, for some reason, he cut it off, and cut off these negro children down in here from attending West Jackson up there and left them in Merry here.

Q. And also, Mr. Huckaba, did you not consider the possibility of taking these three, Highland Park, West Jackson and South Jackson and letting them feed into Tigrett, which is under strength—you didn't consider that either, and leaving these two up here, both of which are substantial schools—and Lincoln—both have a capacity of seven hundred and fifty, don't they? A. I think that's correct.

Q. And it might have been right logical, mightn't it, to let these schools feed into Merry? That might have been very logical, mightn't it? A. Of course, you can draw your own lines.

Q. But the problem on that is—if you did that, you

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would have the negro residential pattern, which is almost solid within this white residential pattern, which is almost solid, and make it almost impossible for these white people to transfer anywhere under your transfer policy, wouldn't it? A. I wouldn't know about that, because I haven't made a study of that.

Q. Well, as a matter of fact, you didn't study—you didn't actually study your school capacities and your locations too much anyway, in working this out, did you? A. I did study it, yes.

Q. What are the plans for old Jackson High School that you mentioned there in the South Jackson area? A. The old Jackson Junior High?

Q. Yes. A. We have no plans for it now.

Q. Just close that down? A. Well, it is being used now with another agency.

Q. I see. The figures that you have given us on the Jackson Junior High School, the new Jackson Junior High and not the old Jackson Junior High? A. That's right.

Q. Now, have you made any study of where the future

increases in enrollment in the school system are likely to occur? A. I took into consideration the location of this school would mean there would be other development out east of town and, of course, this area that has already been taken in here, a large number of these people are attending county schools. But now with the location of this new school, we feel there is a strong likelihood of those people asking for admission in the new junior high school. It is true that when you locate a school that they begin to develop housing around there, to live in there, to go to that school, because it is a new one. Now, of course, it is true that there is an industrial area out there, and we feel like that all of that development will mean in the future that there will be housing development in there. That's a new building. That's built for fifty years.

Q. Well, of course, if the population increases substantially, then you will have to build more new buildings, will

you not? A. Well, that may be the case, but, certainly, the capacity of this building will take care of it for a long time.

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Q. Well, you have already testified, though, as to the total number of county students that you have involved at present? A. Yes.

Q. And that is some eighty-eight, and twenty-six of them are already enrolled, that is from this area that you are talking about now? A. Yes, on the elementary level.

Q. So you are now talking about sixty-two students. Now, have you in any other area of town, taken into consideration an area of the school system any further increases in the school system—increases or losses? A. Increases in junior high school?

Q. Yes. A. Well, of course, this development north of town will certainly feed into the Tigrett Junior High School. A large part of this over here in the northwest part, and, of course, the development of this area will feed into Merry Junior High.

The Court: Mr. Williams, it is 12:30. It is time to adjourn for lunch, and we will take up again at 2:00 o'clock.

Mr. Clerk, adjourn until 2:00 o'clock.

(Adjournment.)

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The trial of the case was resumed on this date, Friday, May 28th, 1965, at 2:00 o'clock, p. m., when and where evidence was introduced and proceedings had as follows:

The Court: Go ahead, Mr. Williams.

By Mr. Williams:

Q. Mr. Huckaba, I just want to go over one thing briefly and then ask you one or two additional questions, and then I will be through. Getting back to this West Jackson and South Jackson situation, I believe West Jackson was approximately ninety to a hundred under capacity during the current year, and South Jackson was approximately nineteen over capacity based on your figures in your replication that your counsel filed here. Those figures are correct, I believe you testified, are they not? A. That's what is in the record here. I think that's correct.

Q. Now, what I want to ask you is why in your zoning revision that you made just this month, just a few days ago, why did not you draw your zone lines or why didn't you move some of those children from South Jackson to West Jackson? A. Why didn't I move them from South Jackson to West Jackson?

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Q. Yes, sir. During the past year with South Jackson overcrowded like that, why didn't you transfer some of those children to West Jackson? A. Well, they asked for application for going to Alexander School before we had a time to really get into a thorough study of the situation. We had filed this objection to the way we were handling this thing, in the early part of September.

Q. And just because we had filed a motion asking that they be transferred immediately to Alexander, you felt like you ought to resist, is that right? A. I think that you asked for them to be transferred to Alexander.

Q. Well, Alexander was under capacity too, wasn't it? So, actually, the upshot of it is you just felt because we filed a motion that you ought to resist? A. I felt certainly we didn't have an opportunity to make a careful study of it, Mr. Williams.

Q. Now, Mr. Huckaba, I think you have previously testified that included in your enrollment figures in the West Jackson School are some students who are registered from the County, that's correct, isn't it? A. Yes, sir.

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Q. And that's a rather substantial number. I think you said perhaps seventy odd. A. Yes.

Q. And also included in that figure are at least some white students who actually reside in other school zones, some of which are negro, including the South Jackson, and were permitted under your transfer policy to transfer into West Jackson, is that correct? A. Yes.

Q. Now, Mr. Huckaba, let us assume that if you drew the zone lines—you mentioned the possibility that if a change were made in the zone lines so as to include this entire area above Lafayette or Main Street that West Jackson might become overcrowded and that that was a consideration that you took into account? A. Well, of course, there are a number of factors here that are pretty hard to determine just where they are finally going to be.

Q. Well, I think I insisted if you counted the students, it wouldn't become overcrowded, but you said that was a possibility, that they might? A. Yes, sir.

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Q. As a matter of fact, Mr. Huckaba, in drawing your zoning lines to establish the basic zones wherein white and negro children have a right under the Court's decree to go to school, you then took into effect overcrowding which partially consisted of white children who had already been transferred in out of other zones and also county white students, didn't you? A. Well, Mr. Williams, I will have to say that before I made a final settlement on the county pupils, I had to determine those, of course, that were in the area, and those that were assigned to that school before I took into consideration the county pupils, and I had to hold that in abeyance for a few days until I could see just where we were.

Q. But you have nearly a hundred. We have seventy. You have seventy county children and you are already ninety some odd under capacity and you have seventy some odd county children and those that you actually have in there, and I counted some fifty or seventy some odd, and you weren't sure, but at least you admit that you have some transferees into that West Jackson zone from the South Jackson zone, and it would be reasonable to assume, then, that you probably got at least a hundred in there

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who are county students, and they are all white? A. Yes.

Q. Or other white children who transferred in from your city South Jackson zone, that's right, isn't it? A. Yes.

Q. And which would reduce that school, which would increase it to some two hundred under capacity, that's correct, isn't it? A. That seems to be correct.

Q. And you would hardly be likely to find two hundred students in this area right in here, would you? It doesn't

look like it? A. Well, yes, I would say that that probably is the case.

Q. That you would not find two hundred just in that little area? A. Yes.

Q. So that when you were considering the possibility of West Jackson becoming overcrowded, you were taking into consideration the county, white county students in there and the white transferees from the negro school zones? A. Well, we used the enrollment figure.

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Q. And you used that consideration in drawing your zone line and running it up there so as to include these people out of the West Jackson zone? A. That zone line was drawn before these enrollment figures for this year were available.

Q. I thought you just drew that zone line—I am talking about this one right here (indicating). A. Yes, that's right.

Q. So that you did use those considerations in drawing that zone line? A. In this new area, here, that's right.

Q. Now, one or two more questions—you misunderstood me when I asked you what were the areas of possible future increase within the school system. I didn't mean from out in the county. What I was referring to was this —in your supplemental—no, I believe it was in your original replication, you included a breakdown of school children in the classes in the elementary schools by grade and class. Do you remember that, Mr. Huckaba? A. Yes.

Q. Now, I was wondering if you know whether or not in any particular school, like South Jackson, for instance, whether there are more or less children in the sixth grade

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than there are in the fourth grade? A. In South Jackson?

Q. Yes. A. The sixth grade in South Jackson, according to the figures here, is fifty-nine in all, and two teachers, and in the fourth grade, of course, there are more. We have under the fourth grade, which is made up of third and fourth grade pupils—

Q. Well, I didn't want you to get into any detail figures. I just wanted to see whether or not this isn't true.

As I glance over those figures there, isn't it true that you start out with the sixth grade, going downward from the sixth grade, that you have only fifty-nine children in the sixth grade and that that goes progressively upward to the point where you have got about a hundred—let's see—a hundred and fourteen children in the first grade, isn't that true? A. Yes, that's true.

Q. You have more progressive, more or less, with a minor consideration or two, as you go downward to the first grade, that's true, isn't it, Mr. Huckaba? A. Yes, that's true.

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Q. Now, what I wanted to ask you is what would you say that that indicated in terms of the future growth of the enrollment in that particular school? A. You mean as far as the fifth and sixth grades are concerned?

Q. Wouldn't it indicate since you have progressively more in the first grade, going downward from the sixth to the first, wouldn't that tend to indicate that the enrollment of that school is increasing and that you might reasonably expect a continued increase in the enrollment of that school? A. I would say this, Mr. Williams, that the number that would be in the first grade next year could possibly be less than it was this year because there is always a variation. You will have heavy grades and then

occasionally you will have times when there are fewer pupils and that was the case when these in the fifth and sixth grades were in the first and second grades.

Q. What I am saying is, though,—is this—as a general proposition where you have that type of increase that is shown here, the enrollment seems to be increasing at a

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relatively regular pace, that is there is a trend to that. A. Well, we can't guarantee that trend will continue.

Q. I am not asking you to guarantee. What I want to ask is have you looked at this trend in your school system in an attempt to determine where your areas of population, school population increase, are most likely, based on the known facts in your school system, in your present enrollment? A. Yes, I could tell you that.

Q. Based on that, I will ask you whether or not it isn't true that the figures that you have shown to the Court, that they show that your future increases are most likely to occur in South Jackson, Whitehall, Alexander and Highland Park, in that order and that South Jackson is a school that is most likely to increase in its school population? A. If you take these figures here, and if that's continued, Mr. Williams, yes, that's true, but I must come back again and say through my experience that next year's first grade may not be this.

Q. But here you have some known figures, and it is at least a little safer to figure on known figures than it is to

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guess about whether some private entrepreneur is going to build a real estate development up north here. Isn't that a fact? A. Well, that is something that must be considered. Now, when I hear of the developments that are

going to be built around in the new areas, that's a factor that we must consider.

Q. Well, as a matter of fact, though, if somebody built a development out in this—does the City go all the way out now? A. Yes.

Q. Well, if somebody built a subdivision, a new development out in that area, you would build schools out there in that area for them, wouldn't you? A. Eventually, I am sure they would, but not now. They are not in the immediate future, because we have schools to take care of the immediate future. Now, what goes on out there, nobody knows, but if that continues to develop out that way, there certainly would be another school built, and the same thing would be true if it developed this way or this way (indicating).

Q. But if there is a pressing need here in town for

somebody to attend a school close to his area of residence, it is not your intention to zone him away from his area of residence and make him go to school from way up here down here, when there is a school right over here just because at some time in the future you may expect somebody to build a development miles away out in the county —that's not your intention, is it? A. Well, of course, if you will look at other schools and where the pupils are that go, you will find in other areas that you have a similar situation. Highland Park is a good example of it.

Q. I am trying to deal with this annexation situation. You don't intend to tell the Court that you would zone a child in town so that he would have a greater distance to go and pass by a school that was available to him and under capacity because you expect at sometime in the future somebody will build a subdivision way out in the

annexed area in the county? A. Well, there can be more residences built out in this direction.

Q. But that is not your intention, is it, Mr. Huckaba, to do that? Are you representing to the Court that you should

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zone, draw your zone lines with regard to West Jackson, South Jackson Schools so as to require a negro child living up here close to West Jackson, which is under capacity, to go to South Jackson, which is now over capacity, simply because you want to take into consideration the possibility of the future residence development out in North Jackson? You are not representing that you are entitled to do that, or that you desire to do that, are you? A. I will have to go back to this, Mr. Williams: This is an honest effort on my part to try to meet the requirements of this Court, and I have tried as best I can to equalize this situation for the best interest of the children of the City of Jackson, all included. Now, we recognize that we needed to give some relief up here in this area where we are offering to do it. But, at the same time, I do not want to continually be shifting people back and forth because you have got to take into consideration that there is a possibility that you could overload another school and relieve another one and you would be no better off.

Q. Mr. Huckaba, is it a bad educational practice to be

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shifting people back and forth? A. Yes, I would have to say that it is much better for them to stay in their school just as long as they can, the same school.

Q. Better to be assigned to a school and stay there without being transferred? A. Well, of course, there are pupils that have to be transferred. But, at the same time, I would say that a child is better off to remain in the school if at

all possible because there are always adjustments and changes that have to be made.

Q. So that it would be better for these white children zoned down here in South Jackson to go on to the school that is in their zone and not be shifted around and transferred to West Jackson and Alexander and so forth? A. They have been going to West Jackson.

Q. Well, they have been assigned to South Jackson, though, haven't they? A. Who?

Q. These white children who live in the South Jackson zone? A. They asked for a transfer to West Jackson.

The Court: His point is that they have already been going to West Jackson.

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The Witness: That's what I am trying to say.

The Court: I think you finally got into a point about this West Jackson, South Jackson situation and the feasibility of extending the south line of West Jackson eastwardly until it hits the railroad and then go up the railroad until you hit the east line of the proposed Whitehall zone, and then include everything north and west of that new line in the West Jackson School zone. Now, directing your attention, Mr. Huckaba, to the Alexander line and school boundary, I am referring now to the southeast part of the Alexander zone and the southwest part of Lincoln. You will note that the railroad—I assume it is the Illinois Central Railroad—runs up from the south line of Lincoln up and becomes the west line of Lincoln, so there is an area there which is part of the Lincoln School zone, which is west of the railroad. Do you see that?

C. J. Huckaba—for Defendants—Cross

The Witness: Is this what you are referring to here (indicating)?

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The Court: Yes—Merry School is actually in that area.

The Witness: Yes.

The Court: Now, what would be wrong, from your point of view, of including that area from the railroad west in the Alexander School zone, so that the children who live in there wouldn't have to cross the railroad? In other words, take a little of Lincoln and add it to Alexander. I am trying to see from your map there how many families are living there. Do you have any idea how many children live in there?

The Witness: Well, you can see from the dots there are quite a few elementary pupils there.

The Court: Let me ask you this: What was the situation on Alexander last year with respect to capacity as compared with enrollment?

The Witness: We had an enrollment of six fifty-two, a capacity of seven fifty.

The Court: So you are a hundred under capacity at Alexander?

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The Witness: Judge, may I make an explanation there? We have a special education class there that is using one room, and when I arrived at the figure of seven fifty, I took into consideration that if it was a regular class room, then certainly that would be able to take care of thirty to thirty-five pupils. But this room, which is for special education, is taking care of about five or six people, the multiple

handicapped group, and that would, in some respect, cut this back, as long as we have that class there.

The Court: Well, your figure there shows you are about a hundred under capacity, so if you took that into consideration, you would be about seventy under capacity?

The Witness: Yes, sir, that would be the case.

The Court: Now, at Alexander you have some white children who don't live in that zone who have been allowed to transfer to that zone.

The Witness: Yes, sir.

The Court: And you probably have some white

county children who are going there.

The Witness: Yes, we do. But, may I explain that the new annexation is going to make them city pupils, rather than county pupils.

The Court: But you have, you would say, a minimum of seventy under capacity at Alexander?

The Witness: Yes, I would say that that would be the case.

The Court: Can you see any problem whatsoever in transferring that part of the Lincoln School zone, proposed zone, west of the railroad into the Alexander, so that the railroad would continue to be the borderline all the way up from the south line of Lincoln and become the west line of Lincoln?

The Witness: Judge, in Lincoln School this past year there was enough to move out of the area in that school there to make three vacant rooms at Lincoln School. I think that would mean additional vacant rooms there.

C. J. Huckaba—for Defendants—Cross

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The Court: It would obviously mean that some people would be transferred out of Lincoln into Alexander. You say some people have moved out of Lincoln?

The Witness: Yes, sir.

The Court: What is the reason?

The Witness: It was a group of them primarily living around Alexander School asked for admittance into Alexander School. Now, some of the others went to Whitehall. Of course, not a large number of them. The largest number of them went into Alexander School. Now, I would say this, if I may, Judge, that if you put that in the Alexander area, then that's going to mean more vacant rooms in Lincoln, and it is going to possibly crowd the situation in Alexander, because we don't know yet just exactly how this thing is going to fall when this situation develops here outside the city limits. Some of those people have been going to the county, but now, if they exercise that right, they will have the right then to come into the city schools. So

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that's the situation as I see it, that Alexander is way down here, but the city has taken in all this area right on up here, and some of these people have to go here, and some of these people here have to go to Highland Park, and that's the difficulty of the situation.

The Court: Go ahead, Mr. Williams.

By Mr. Williams:

Q. Mr. Huckaba, when you said that some of the people

had moved out of Lincoln last year to go into Alexander, you didn't mean that they had moved out of their zone. What you actually meant was that negroes living in Alexander and who, under the Court's order, had a right to attend Alexander, thereby created the vacancies in Lincoln, and what you further meant was that by reason of your racial gerrymandering, there were no white children taken into the Lincoln School to take their places—that's what you meant, wasn't it? A. That's the case.

Q. So, what you are saying to the Court when you talk about capacity, this capacity of the school, you are not using it in the sense that an ordinary school administrator would use school capacity, in determining school zones,

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are you, in that when you talk about capacity, you are talking about retaining your claimed right to allow white county students, white transferees to come into the zone of a school and to attend that school regardless of the number of negroes who live in proximity to that school, and when you talk— A. (Interrupting) All of the negroes in proximity that applied for Alexander were approved.

Q. What I am saying to you, and now you follow me, please—when you talk about the consideration of capacity in drawing your zone lines and in determining what capacity you can allow that school in terms of the geographical area where you are going to draw your zone lines, you don't consider just geography and capacity alone, you consider the question of how many white transferees from that negro zone you have to accommodate, do you not? A. No.

Q. You don't consider it at all? A. No.

Q. Then will you explain to the Court why you just told the Court that if you adopted the Court's suggestion with

regard to this railroad, you would leave Lincoln under

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capacity? A. Well, these people have the prior right to go in there if it is zoned in there.

Q. What I am saying is if you drew the zone lines according to school capacity and proximity, then you would not have to worry about this over here, because you could pick up some of these—you could pick up some students in the immediate geographical area of Lincoln Elementary School, couldn't you—you could draw your zone lines so as to provide a compact area, couldn't you? A. Well, of course, this is the way I drew it, and in my judgment, this is best, to the best interest of our school system.

Q. And what you deemed to be the best interest of your schools is to continue racial segregation as far as possible, is that not right, sir? A. No. I am trying to the best of my ability and taking into consideration the whole school situation, and I am trying the best that I can.

The Court: Mr. Williams, we are not accomplishing anything with that. Are you through with this

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witness?

Mr. Williams: One more question, if Your Honor please.

Q. There is no question but that West Jackson is under capacity, that's true, isn't it? A. Yes.

Q. There is no question that South Jackson is over capacity? A. A little.

Q. There is no question but that this school is very likely to grow in enrollment in the future? A. That remains to be seen.

C. J. Huckaba—for Defendants—Cross

Q. Well, based on your known figures, this is likely to grow in enrollment?

Mr. Rice: If the Court please, we have been over that.

The Court: I think you have proven all this, Mr. Williams.

Mr. Williams: What I want to ask is—

Q. Why didn't you draw your zone lines so that these children would be transferred to West Jackson, especially since you have a railroad here—

The Court: (Interposing) You have already

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asked that.

By Mr. Williams:

Q. As a matter of fact, you gerrymandered it? A. No.

Q. Notwithstanding the fact that these colored children were excluded from that zone—you deny that? A. Yes.

Q. And you deny that you gerrymandered the Lincoln Elementary zone? A. I deny that I did. I took into consideration the whole situation.

Mr. Williams: That is all.

The Court: Mr. Rice, do you have anything further?

Mr. Rice: No, sir.

The Court: Step down, Mr. Huckaba.

(Witness excused)

The Court: Do you have any other witnesses on this particular point?

Mr. Rice: No, sir.

The Court: All right. We will be glad to hear from your witnesses, Mr. Williams.

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Mr. Williams: Call Mr. Bardwell.

ROGER W. BARDWELL, the said witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Williams:

Q. Sir, will you state your name, age and address, please? A. My name is Roger W. Bardwell. I am forty years old. My address is 2829 Briarwood Drive, Arlington Heights, Illinois.

Q. What is your occupation? A. School Superintendent.

Q. Of what school system? A. School District 59, Elk Grove Township, Illinois.

Q. What is the size of that school system? A. Approximately sixty-two hundred children.

Q. Would you say that is a school system of comparable size to the system we have in this particular case, seventy-three hundred? A. It is in the same size range, I would say.

Q. Would you state, please, your educational and pro-

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fessional qualifications? A. I have a bachelor's degree from the University of Wisconsin, a Bachelor of Science; a Master of Science Degree from the University of Wisconsin, and a Ph.D. from the University of Wisconsin. The Master's Degree was taken in Curriculum Work and Elementary School Administration. The Ph.D. Degree was

taken in School Administration, with a minor in Political Science.

Q. Dr. Bardwell, when did you complete your—when did you receive your Doctor's Degree and begin work? A. I received the Doctor's Degree in 1960. I have an experience background of some seventeen years, all but two of them was connected in school administration. I taught for two years, and then I was a teaching principal for two years, a junior high school principal, Assistant Superintendent for five years, and then I spent two years at the University of Wisconsin doing research work in school systems in the State of Wisconsin. Many of the problems that we worked on were zoning problems, planning school buildings and studying the community to help determine the placement of schools and that type of planning. In the last five years I have been in Elk Grove and

watched that system grow to over five thousand students, and this has involved planning zone arrangements and pupil placement and school buildings and the like.

Q. Now, I forgot to ask you ahead of time about this, but do you have memberships in any professional society that might reflect on your qualifications? A. I am a member of the National School Administrators Association, Illinois School Administrators Association, the National Educational Association.

Q. Now, specifically, you have been Superintendent—you have held your present position as Superintendent of the School District which you indicated for how long? A. Five years.

Q. Dr. Bardwell, were you, along with Mr. Merle Herman asked to make a study of the City of Jackson School Zone and Transfer Plan, to determine whether or not there

was evidence of racial gerrymandering, and whether or not the transfer plan or any other factors had any effect on that? A. Yes, I was asked to do such a study, and carried out such a study.

Q. Did you prepare any exhibits in connection with this

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study? A. Yes. I prepared a total of eight exhibits, trying to analyze the data so that the information could be presented in a form that I could understand and I could possibly communicate the situation to others.

Q. I will hand you a document, which I will ask be marked Exhibit 12, for identification, and I will ask you if you will state whether or not that is the result of your and Mr. Herman's investigation, and if that was prepared by you and under your direction and your supervision? A. Yes. Mr. Herman and I prepared this together. It was prepared under my supervision. This is a summary of all but one—one exhibit I attempted to work on the last day or so, which compares the changes in boundary zones, which I believe are reflected on this exhibit to my right. I did prepare one additional exhibit to this.

Q. Do I understand that you have other copies of this exhibit that you propose to use in evidence, rather than this? A. Yes. These are all copies of the same material.

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I think after these are shown to the Court, they should be made part of the Court record for any future reference. They are a little more accurate than those and a little more stable.

Mr. Williams: We will introduce those exhibits and have them marked now, if the Court please.

Mr. Rice: May it please the Court, until there is

some substantiation what these are based on, other than the fact that he prepared this physical document, we object to the introduction of these exhibits.

The Court: As we understand it, you are objecting on the basis that these documents were prepared to illustrate how you can effect integration, with that purpose in mind, and you say that is not the proper object under the law, and, therefore, you object on that basis, and the Court overrules that. And now you are objecting on the grounds that it hasn't been shown as to the underlying data that went into these exhibits, where he got it and so forth and so on?

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Mr. Rice: That is correct.

The Court: I believe Mr. Williams will be able to show that the information these were based on was obtained as a result of analysis of your records, which information was transferred to the witness, and he, in turn, transferred it to these maps, so we will overrule the objection at this time, subject to Mr. Williams being able to show that this information is based on the data that was obtained from the defendant school system's records.

Mr. Williams: Yes, sir, I had proposed to show that, and I had proposed to ask the witness that after I marked these exhibits for identification.

The Court: All right, sir. Let's mark them now for identification.

Mr. Williams: The others also, Your Honor?

The Court: Whatever you intend to introduce. We might as well mark them all now. You already

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have as Exhibit 12 this series of maps which we think we understand include all that you now propose to introduce except one new one, which has just been made, is that correct?

Mr. Williams: That's correct.

The Court: And you are telling the Court that the ones you are introducing now are a little more accurate because they are more firmly attached together and the boundary lines won't slide over each other, is that right?

The Witness: Yes, sir.

The Court: All right. Go ahead and mark them.

(The documents above referred to were marked Exhibits 12 through 21 respectively, and same will be found among the exhibits hereto.)

The Witness: While he is marking those, could I explain these?

By Mr. Williams:

Q. Yes, if you will, state to the Court how they were prepared. A. Well, when asked to do this, I felt that I had

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to gather enough data to make a judgment. I felt as if I had to act that this was a school system where I knew that every pupil lived. So we prepared a data sheet, just listed numbers and had a place for the pupil's name and address and his race, because we knew that was a factor here. We assumed that it might be. And we got a group of college students from Lane College together and we explained to them what we wanted to put on the data sheet, and also had copies of attendance registration records for the Jack-

son Schools, and we indicated what information we wanted transferred off of that record on the data sheets.

We explained that all to them as a group when Mr. Herman and I were in Jackson, and then Mr. Porter supervised these students in going right down to the central office and copying all of this on the data sheets, and then we asked the students, took another trip to Jackson and explained that we wanted the children placed from the data sheets on the maps by grade and by school. We felt in that way we could insure some type of accuracy on the maps. There wouldn't be too many dots on the maps. I have all the maps back there on the table. Then these maps were sent to Mr. Herman and I in Illinois, and we again trans-

ferred these children that were located on the individual maps by grade and by school and summarized them into these exhibits. We consolidated the children into a single school, and then we took one further step. We consolidated the children into one dot for five children, so we felt that would establish the pattern and be accurate enough for the Court's purposes.

Then we further photographed the map of Jackson, which was the Chamber of Commerce map, the one that we worked on continuously. This is the map of the City of Jackson. We photographed this down to a size where we could handle it and project it through an overhead projector, so we could make our exhibits clear to other people, and we copied the large maps with a piece of tracing paper, laid tracing paper over the maps and copied as accurately as possible each dot, and consolidated to five children for each dot, and then photographed the tracing paper and reduced it to the same scale of the map of Jackson that we planned to project, and then we could analyze the various zoning

situations and they would take on some meaning to us.

Q. Now, Dr. Bardwell, is it your opinion—wait a minute.

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let me ask you this: Is this an accepted method in the profession, the method that you used? A. We used this method to present the data to our own Board of Education.

Q. Is it an accepted research method? A. It's an accepted method of making these things demonstrable to other people, so they can follow the situation—make things as graphic as possible. We use them in presenting enrollment data to the Board of Education so they can participate in these problems and understand them.

Q. Is it your opinion that the exhibits that you have thereby prepared are reasonably accurate? A. We feel they are reasonably accurate, yes.

Q. Now, will you, if you please—I think you have stated that you have restudied the matter based on maps which I furnished to you? A. Yes.

Q. Which contain the revisions made by the defendant? A. Yes. I have studied those maps.

Q. Will you just go ahead and explain to the Court what your conclusions are? A. All right.

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Mr. Williams: I notice that Dr. Bardwell has an overhead projector that he wanted to use on the wall. It didn't show up too well with a great deal of light. I was wondering if the lighting could be partially darkened for that purpose, if Your Honor please.

The Court: Yes, sir.

The Witness: I would like to go through these and support some of the conclusions that I came to. I will have to step down there. Is that all right?

The Court: Yes.

The Witness: This projection will be a little fuzzy, but this will show it to the Court better than any way I can think of. This exhibit, marked Exhibit 13, compares the enrollment of boundaries and zones for two adjoining segregated schools. This is the map of Jackson that we used as the basic underlying map. Now, if I take the predominantly white Parkview School, and lay it over the map, it shows the zone for the Parkview School, and also indicates the number of transfer pupils. Each dot indicates

five students. You can see the number of children that have been transferred into Parkview School, Parkview Elementary School, and then we lay over this the adjoing negro Washington-Douglas Elementary School, and it seems to reveal to me that the white children from the nearby Washington-Douglas Elementary have been transferred to the Parkview School and questions—the boundary line here for the Parkview School, it seems that it doesn't follow geography in its establishment, and it makes you question this "L" shape thing here.

The Court: Dr. Bardwell, do those dots in the Washington-Douglas area represent where people live?

The Witness: As close as possible, yes.

The Court: We notice, for example, on the map submitted by the defendants that the area immediately to the west of Parkview School in the Washington-Douglas area has got practically all white people, and it occurred to the Court that even if you extended Parkview zone westwardly, you would still

get only white people. Are you saying that the blue dots represent where negroes actually live?

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The Witness: They are relatively close—within, let's say, a block of that dot. Five negro children live right here, here and here (indicating). So you could move this boundary over. You could draw it across here (indicating). You could draw it in some other geographic way around the Parkview School and, if course, obviously, if you did, you would achieve a higher degree of integration.

Mr. Rice: May I inquire? I don't quite follow. I don't believe I understand exactly what that map is. I understood him to say that he had it on the map by grade and by school, rather than depicting actual residents. Would you explain that a little bit?

The Witness: Well, in the process of making this overlay of, let's say, the Parkview School, the first step was to locate all the children by grade for the Parkview School, so we have six maps of the Parkview School, one for each grade, and on those maps each dot represents one child, and those maps are as accurate as we could make them.

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Mr. Rice: Where the child lives?

The Witness: That's right. Then we took a piece of tracing paper and set that on top of the first grade map and consolidated all those and made dots representing one for five children, and then we laid the same piece of paper on the second grade map and consolidated it, so we had a copy of tracing paper the same scale for the first and the second grade, and we did that up through the sixth grade,

and we had all of the children located for the Parkview School, and we had them consolidated one dot for five children.

Mr. Rice: That's children that actually go to Parkview School.

The Witness: Yes, sir. That's the distinction between this exhibit and the exhibits given to the Court. They show the children that lived in a particular zone, and this exhibit shows the children that attend this school.

By Mr. Williams:

Q. May I ask a question? It not only shows the children

who attend the school, but it shows the place of residence of those children who are attending that school? A. As accurately as we could. Obviously, when we consolidate five children, you can't get it exactly right.

Mr. Rice: I am not questioning that.

By Mr. Williams:

Q. What I want to make clear, though, if you show a dot on there that means that although you are showing only the children that are assigned to that particular school, nevertheless, those children residing within that dot, there are five children residing there in that immediate neighborhood? A. Correct. We felt that the conclusion of these exhibits were obvious. My conclusion is that this shows a transfer situation which I understand is not the main topic today, but it also shows a situation just for—well, the map speaks for itself, in other words.

This exhibit was prepared, again using the same basic map as the backdrop, and this compares the zone lines of two completely segregated adjoining schools, and reveals how the northern boundary line of the South Jackson Elementary has been drawn to assign a lot of the negro chil-

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dren to South Jackson School. Now, dropping South Jackson over first, it seems to have been drawn to bring in a number of children who live quite close to the neighboring West Jackson School, which is in red. I am speaking of this area here. There are a number of negro children here who live closer to the West Jackson School then they do to the South Jackson School.

It also illustrates how all of the white children have been transferred out of the South Jackson area to the West Jackson School. It also illustrates the negro children in the West Jackson School have been transferred to the South Jackson School—this here approximately five children that live here, have transferred down to there (indicating).

Are there any questions about that exhibit?

Q. I might mention something to you. Do you plan to get into later the question of the amount of students involved in that change that was made? A. Yes, I will try to get into that.

Exhibit No. 3, (Reporter's note: The witness referred to Exhibits by numbers previously placed on there and not by a number given by the Court. I believe in this case he was referring to Exhibit 15.) two adjoining schools. This

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is the Whitehall School, which is integrated to some extent, and this compares the boundary lines with the adjoining

Lincoln School. Here we have the negro children who are attending the Whitehall School. Here is the white children (indicating), and here is the adjoining Lincoln School, and approximately thirty white children that transferred out of the Lincoln zone to Whitehall represented by the red dots here, and only five negro children appear to have transferred out of the Lincoln zone into the Whitehall School.

It would indicate that the boundary line here has been drawn, could have possibly been drawn in such a way as to create a higher degree of integration in this Whitehall School, if it followed the geographic area rather than the racial complex of this neighborhood up here (indicating).

Q. That's what I would like to ask—are those zone lines, in your opinion,—do they appear to be drawn so as to follow the racial residence pattern there? A. I feel that this reveals that. I think, again, the exhibit speaks for itself. It is up to the person examining it to draw his conclusions.

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This No. 4 compares the zone for the integrated Whitehall School with the negro South Jackson Elementary School, and here is the white population and the negro population, and here is the South Jackson Elementary School (indicating). It reveals how the South Jackson zone appears to have been constructed with a large loop to the north to include many negro children living closer to Whitehall School (indicating). It also shows how all the white children in the South Jackson zone have either transferred out into the West Jackson or into the Whitehall School.

This Exhibit 5 is on the junior high schools, and No. 6

is on the junior high schools, and Mr. Herman will discuss those in a few minutes.

The next exhibit combines all the elementary school zones in Jackson with the total negro and the total white population. Again, I think this exhibit somewhat speaks for itself.

This is the map again, and if you draw the total negro population on the map, and again each one of those represents five students, and if we drop the zoning plan over that, I think you can see how they follow in many areas the racial complex of the neighborhood, rather than the

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geography of the situation. You can see this way, if you look at the zones here. They are a little hard to see, and you can follow them, and then you drop this over it, and you can see the Lincoln situation here and the South Jackson situation here. You can do the same thing with the white population and, to a much lesser degree, it reveals the same thing. My conclusions from examining this exhibit indicates there is gerrymandering around the boundaries of the negro schools and gerrymandering around the boundary lines of the predominantly white schools; namely, Parkview, and to some extent, Whitehall, and to some extent, West Jackson. The boundary here seems to follow the complex of the neighborhood.

Q. You mean by that the racial complex of the neighborhood? A. Yes.

Now, I have taken one other step. Just for observation purposes, I have dropped an overlay here (indicating). Each one of these circles represents a radius of approximately a mile, the center of the circle being a school, and this is done to try to see if geography were the main cri-

teria for the zoning of the schools, why most all of the

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schools would be integrated with the exception of Highland Park, and Lincoln would be predominantly negro, but the balance of the schools would be integrated to a much greater degree than they are.

The other exhibit, a new one that I prepared, and I will show that briefly, and then I will talk about it. I tried to analyze what effect the changes would have in the new zone lines that were given to us on Monday. These are the new zones. This was done rather hurriedly. I think again you can pick out the schools—West Jackson, South Jackson, Washington-Douglas, and here are the old zones (indicating), and you can see the areas of progress change right in here. This is the main area that they have changed, and now they have the population, but I think I would rather talk from another map, because it does get rather confusing to see the population on that. We went back to the original maps to analyze just how many children were involved in this area, counting the actual dots. So, if we can have the lights on again, I will refer to another map.

The Court: All right, gentlemen, we will have our recess at this time. Be back in fifteen minutes.

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(Recess.)

The Court: Go ahead, Mr. Williams.

By Mr. Williams:

Q. Dr. Bardwell, have you completed the showing of your exhibits? A. I just have one observation to add to the final exhibit where I pointed out the main changes that

had taken place in the zones because of the new maps that were made available to us this week, and I want to refer to this exhibit on the easel.

I just identified three areas that I have labeled, two between Jackson and Preston here, and the third area is right along here. This has been changed over to Whitehall School. Now, as I explained before we adjourned, we went back and counted all the dots on the original maps, and we found an area, one—

Q. Now, Area 1, will you identify for the record, please? A. That is the area bounded by, approximately, Deaderick, and this is Royal, and this is—I can't be sure—that is Preston on the north.

Q. But, at any rate, that is the area comprised by the

northern tip of the South Jackson zone, which was cut off under the defendant's revised zoning plan and attached to West Jackson, is that correct? A. That's correct. And this was moved as a result of this from South Jackson to West Jackson—six white children who had attended West Jackson, and twenty-nine negroes who had attended South Jackson, that's the number of pupils involved in that change, according to our analysis.

In Area 2, and that's the one bordered on the north by Preston and on the south by Jackson and on the west by Royal, there were no white children in that area, and there were eleven negroes that had attended Lincoln and would be placed in the Whitehall zone.

In Area 3, this strip here, which is difficult to define, that would be Royal Street on the east and it looks like Patterson—excuse me—Royal on the west and Patterson on the east. There is only one child that we could see that

was affected by that change, one negro child; so my conclusion from this would be that these changes have not substantially changed the zoning picture of the Jackson Schools.

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Cross-Examination by Mr. Rice:

Q. Now, Dr. Bardwell, would you have any general conclusions, any further general conclusions on the question whether or not the elementary schools were drawn on a racially gerrymandered basis? A. Well, I think that the data that I put together and have drawn conclusions relative to, that each exhibit substantiates that there is evidence that race has been an important factor in drawing the zone lines.

Q. And is that true considering the capacity and enrollment of the respective schools as shown by the record in this case? A. Yes, I believe it does. I think the factor here is that there are a number of transfer students that cloud the enrollment picture, because there are many children attending a school that do not live in that zone, so your actual capacity and enrollment is clouded by the fact that there are a number of these children and also by the fact that approximately ten percent of the county children come in to the city schools, and I feel there could be significant changes made within the zoning pattern in the inner part of the city without overcrowding any of the schools, although I don't have any exhibits that prove that

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point.

Q. But that point can be reasonably concluded on the basis of the figures that have been furnished here by Superintendent Huckaba, is that right? A. I believe so.

Q. In such a situation where it is apparent that racial transfers are being made, not only within the city and on a very liberal basis between the zones, but also county students are being accommodated in the schools, would you say that school capacity could be—or that alleged problem of overcrowding could be reasonably relied upon in the way that they have here in drawing zone lines? A. No, I do not.

Q. What are some of the objective bases for drawing zone lines? A. I think in my own experience one of the main factors has been the geography of the area, distance from school. This is one of the cardinal principles of zoning children, assigning children to schools.

Q. Would you say that it is an unnatural and abnormal situation to have large numbers of children transferring

from one school zone to another for reasons other than ordinary administrative exceptional cases? A. I think so. I think this is tied in with the fact that the schools have an identity and part of the dual system, as I understand it, of a few years ago—they are identified as either negro or white schools, and I think this would certainly accelerate this desire to transfer on the part of both negro and white either into or out of a situation.

Q. In other words, are you saying, in effect, that if these schools did not have this racial identity, that in your opinion it would be highly unlikely that these large scale transfers from one zone to another would be educationally acceptable? A. That's my opinion. This is just my opinion, that there would be less requests for them if schools didn't have identity of the staff being a certain race. You can certainly see how this would precipitate many requests for transfer.

Q. You say the staff being of one race would precipitate many requests for transfer? A. This would be my opinion, that this would identify that school as either a

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negro or white school, and would develop many requests to transfer into that school on that basis.

Q. Dr. Bardwell, as I understand, you were asked to make a study of the Jackson School System, and may I ask by whom? A. By the Legal Defense Fund of the National Association for the Advancement of Colored People.

Q. Are you employed in this matter?

Mr. Williams: If Your Honor please, unless counsel is going to pay the costs of this, if counsel desires to pay the costs, then I would say this might be a legitimate point of interest.

The Court: You are always entitled to show whether or not a witness is being paid and by whom, for the purpose of showing possible bias. We do it all the time. It is a common question in these cases.

Mr. Williams: I respectfully except. I give notice that I plan to move the Court in this case to tax the—

The Court: (Interposing) You have already so moved, Mr. Williams.

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The Witness: My expenses have been paid.

By Mr. Rice:

Q. Have you been paid a fee for your services? A. I assume that I will, although I have no agreement for such. The only agreement I have is for my expenses to be paid.

Q. But you expect to be paid? A. Yes.

Q. Now, have you testified for this organization before elsewhere? A. In one other case, yes.

Q. Now, who, as an individual, contacted you?

Mr. Williams: I object to that, if Your Honor please.

The Court: Objection overruled.

The Witness: I was contacted by a Mr. Leberman, who is a friend of mine, a person I have known professionally for a number of years.

By Mr. Rice:

Q. And he is with the Legal Defense Group? A. No. He is Dean of a school of education in the east.

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Q. He was speaking to you on behalf of this group that wanted to employ you? A. He asked if I would be willing to do this.

Q. And you were then placed in touch with local counsel? A. Then I was put in touch with Mr. Williams.

Q. Mr. Avon Williams? A. Yes.

Mr. Williams: I renew my objection to the whole line of questioning. It is absolutely immaterial, irrelevant and incompetent.

The Court: Mr. Williams, we have this over and over again in court. When you offer expert adversary, counsel is entitled to find out whether he is being paid, by whom and who contacted him and so forth, and the rules of evidence are no different in this case than in any other case.

Mr. Williams: I respectfully submit that he could

have asked whether or not he was being paid and, if so, by whom, and that would have been sufficient, without going into all this background.

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The Court: All right. Go ahead.

By Mr. Rice:

Q. And you were then placed in touch with Mr. Williams? A. That's correct.

Q. Is it your expectation that Mr. Williams is going to pay you? A. Honestly, I haven't—

Mr. Williams: I object as to the question whether or not I will pay him. It is incompetent and irrelevant in this case.

The Court: Well, we think it is relevant on two grounds. First, when you offer an expert witness, you are entitled to go into any pay arrangements you have for the purpose of showing possible bias of the witness. In addition to that, the plaintiffs have moved to require the defendants to pay the plaintiffs' fees, attorneys' fees, and I assume even expert witness' fees. That being true, I think the defendant is entitled to show whether or not the plaintiffs themselves have incurred any liability for any fees. I think that's the law.

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Mr. Williams: May it please the Court, I intend to cite additional authority to Your Honor on that question.

The Court: All right, sir.

The Witness: I had no formal agreement of any kind. It was just an understanding that I had.

By Mr. Rice:

Q. With this gentleman that contacted you to begin with? A. No; with Mr. Williams—that my expenses would be paid for this study that I was asked to do.

Q. And do you have a contract of any type with any named plaintiff in this lawsuit? A. No.

Q. Dr. Bardwell, if I understood you correctly, and I may be a little bit cloudy on this, your exhibit that you filed and also the overlays which you used on the projector a moment ago, they reflect the residences of the children going to a particular school, that's what that is, is that not true? A. Correct.

Q. That's not to be confused with the residences of every

child living in that area, is it? A. No. If there are children living in that area that might attend a private school, they obviously would not be on these maps, but if they were living in an area and attending a public school, they would be on one map or another, depending on the school they attended.

Q. So your map and your view graph displace—they are not the same as Exhibit 11, are they? A. No, they are not.

Q. You started, as I understand you then, what you have here is the end result of a school year after all registrations have been made, that is right, isn't it? A. That is right. It's a picture of the school system during the month of December, 1964.

Q. Now, are you able to point out to the Court which of these children that are shown upon your exhibits have remained in a school by virtue of the Court's original order, which allowed them to remain in the school in which they were then attending? Can you distinguish between those and any other? A. No. Except I could distinguish

them as transfer students, and then I might ask—this was

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confusing to me. Maybe you can clear this up. I was under the impression that the Court had asked—that the prime right of attendance belonged to the children that lived in the zone.

Q. Right. A. And, to that extent that right superseded the right of the child to stay in the school that it had been transferred in.

Q. Right. But the Court further authorized a child going to that school at the time of the August 20th, 1963, order to continue there. A. I understand that.

Q. Now, are you able to say how many of those children are exercising that right, that you have depicted upon your map? A. No.

Q. Now, in zoning, Dr. Bardwell, do you try to zone just for the pupil load of a given year, or do you try to zone for a period of time, with the flexible pupil load? A. I think you try to do both. The first consideration, I think, is for a given year of education, but obviously, this is

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influenced by the desire to create a stable situation. It doesn't change every year.

Q. Now, I believe you are familiar with this case, and understand now the transfer provisions that have existed and that will exist. Do you understand that's been changed, or that the Court has already indicated that it will be changed? A. I have not a complete understanding of the change. It was just explained to me briefly at lunch. This was the change that just took place?

Q. Yes. Now, let me ask you this question: If you, as an educator, based on your experience, had been asked to district the City of Jackson schools as they exist or as they

existed at the time the Court told us to put a desegregation plan into effect, bearing in mind that the Court ordered that those in the schools could remain, keeping in mind the transfer provisions, keeping in mind the fact that we have had, prior to that time, a completely separated dual system, with whites living in negro areas going to white schools, and negroes living in white areas going to negro schools, could you have districted the City of Jackson elementary schools and been able to tell with any degree

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of accuracy exactly how many children would wind up in each school? A. No.

Q. Now, I direct your attention to the 1964—in districting with that type of situation, it is a trial and error proposition, is it not? A. To some extent it is, but you have ways of finding out in advance the situation. In other words, you can work on spring and early summer on the choices of people before your final lines might be drawn. I mean I think that that question is a little misleading in that it isn't that hit and miss.

Q. Let us put it this way, then: On August 20th, 1963, the Court handed down its decision in the City of Jackson segregation case. Our schools began on September 2nd. Now, in that time could you determine with any accuracy what was going to happen in the districting of schools?

Mr. Williams: I object to that, because the School Board had taken several months prior to August to conduct a so-called census and prepared this zoning map and presented it to the Court at the July, 1963, hearing. So that question is based on a

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false premise.

The Court: I think, Mr. Williams, your objection would go to the weight of the evidence, as opposed to the admissibility, so the objection is overruled on that basis.

By Mr. Rice:

Q. The shorter the time, the more difficult the task—you will agree with that, will you not? A. That's true.

Q. Now, I direct your attention to the September term of the 1964-65 school year. In that particular year, Dr. Bardwell, the city schools of the City of Jackson opened on August 31st. On September 4th, five days later, we were attacked in court for the operation of our system. Now, I ask you, in all fairness, if anybody had time in that period to actually assimilate what was happening in the City of Jackson School System?

Mr. Williams: That is objected to, if the Court please.

The Court: I think that's probably a question that is not subject to an expert opinion, Mr. Rice. I sustain the objection to that.

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Mr. Rice: All right. Let me ask this question:

Q. I believe that you were supplied in data form, compiled form, transfer information concerning the City of Jackson School System for the 1964-65 school year? A. Yes.

Q. How long did it take you to analyze those figures and come up with a conclusion? A. Well, that's a little bit tough, because I had another full time job. We spent several days on this during the holiday recess with some

secretarial help. I would say that all told, counting secretarial help, it took about two weeks to put together the data for these exhibits. Now, it stretched over a much longer period of time, because we had to take that two weeks whenever we could find it.

Q. I believe that you said that you had some experience in districting and establishing new schools for the State of Wisconsin—was it? A. Both in Wisconsin and in Illinois, yes.

Q. Now, were these primarily in connection with the location of new schools? A. Primarily, yes.

Q. I will ask you if it isn't true and a fair statement

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of fact, Dr. Bardwell, that when you take an existing school system, that you simply have to take the schools where they are when you try to district them? A. That's correct.

Q. So, when you give us a circular districting of our city schools—what is the purpose of that exhibit? Are you recommending that type of districting? A. No.

Q. It wouldn't work, would it? A. No. That circle obviously wouldn't, and I say so in the exhibit, because there are many other factors that would influence the circles, but it would give you a basic starting point, and from there you would take in the geographic situations.

Q. Now, look for a moment to Defendant's Exhibit No. 11 to the Washington-Douglas area, the district that you see here. Now, that school, according to the proof and the figures shown here, has a capacity of five hundred twenty-five pupils. Now, good planning would require that the City of Jackson use that capacity to its best advantage, would it not? A. Yes. But I would like to qualify my answer there in that the building itself is quite a minor

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part of your educational investment. It represents somewhere in the neighborhood of ten percent of your cost of education, so that the building should not dictate the program or the location of the school, and I think this is a thing that we have failed to communicate very well to people who are helping make educational decisions. It goes over a long period of time, and it's a minor part of your experience in operating your school system.

Q. Do you suggest that the school be abandoned? A. I suggest there are some other educational and social considerations that might outweigh the factor which you mention, which is a factor certainly—I am not saying that it should be completely disregarded, but this other thing might cause you to have empty rooms somewhere else.

Q. Now, in following that line of reasoning, would it be proper for a city to consider what it has spent for educational capital outlay in the last few years, and what its bonded indebtedness is? A. That would certainly be a factor.

Q. Would it surprise you to know, Dr. Bardwell, that the City of Jackson within the last, since 1947, has con-

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structed Washington-Douglas, Parkview, Lincoln, Alexander, Highland Park, all brand new schools, in the elementary field? A. Yes.

Q. Would it surprise you to know that Tigrett Junior High School, Merry Junior High School and the new Jackson Junior High School are all—have all been constructed within the last— this one is brand new, is just opened, and the other two have been constructed within the last ten years? Would the fact that the bonded indebtedness of the City of Jackson for school construction is approxi-

mately six million dollars influence your thinking on what we should do about these schools? A. I am not familiar with the limit. What is that limit?

Q. We have no legal limit. Our bonded indebtedness is approaching forty percent of our assessed valuation. Would that influence your thinking? A. That's a high figure, and would certainly influence these decisions as to how you use your buildings.

Q. So a town in that situation is not ready to abandon its school buildings? A. I didn't suggest that as the main consideration. I think there are many other ways that this could be done, and I wasn't asked to present a plan.

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It would be presumptuous on my part to do this. I am not that familiar with the situation. I am not familiar enough to say the lines should go down this street or that street, and I feel there are many other alternatives that you would have to consider. For instance, there is no reason why every school has to have six grades in it. We do that many times in our system. You can have a number of different kinds of attendance centers. The only school that we have that is six years is the elementary school. So, all of these factors could be considered in your zoning for a town similar in size to Jackson.

Q. Did you consider that type of graph in arriving at your criticism of the present zoning? A. I looked at it, and I made certain conclusions. I made no specific recommendations.

Q. I understand that, but is your conclusion based, in some degree upon your thought that our system should be changed, and that it could be done a different way? A. To some extent, I am sure. I don't mean to be critical with that comment. It's just an observation.

Q. Let's just accept for a moment that the City of Jackson chooses to operate with six elementary schools, three

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junior high schools and three senior high grades. The plan that you have on this Exhibit 11 for elementary schools, that is a plan, isn't it? A. Yes.

Q. And if twenty-five or thirty people sit up here and drew a plan, you would probably have twenty-five or thirty different plans, wouldn't you? It's a matter of opinion, isn't it? A. There are certain principles that are very important to follow, and you can analyze the plan to see how well it measures up to those principles.

Q. Now, have you had an opportunity to look at the school load, class room load capacity enrollment and so on for the City of Jackson elementary schools that was in the replication? A. Yes, I am familiar with that replication.

Q. I will ask you, Dr. Bardwell, if the school load and class load and teacher load are not fairly balanced in those schools? A. Yes, they are.

Q. Dr. Bardwell, I understood you to say that you are from Arlington Heights, Illinois? A. Yes.

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Q. What is the nature of that community? A. I think it would be characterized as a middle class suburban-type community.

Q. Mostly residential? A. Quite a bit of industry. There are a number of different types of population—a number of trailer courts and apartments. It is not the conventional bedroom-type suburb.

Q. It's a very well-to-do neighborhood, isn't it? A. No, it isn't. It's middle class. There are some parts of it that

are upper middle class, but it isn't a wealthy community. You have a lot of industry, so you have a broad tax base.

Q. You have eleven elementary schools there, including one junior high? A. Two junior high. We have thirteen schools altogether.

A. A high school? A. No. The high school is part of an overlapping district.

Q. Your people go to that high school? A. Yes.

Q. That's not under your jurisdiction? A. No, it is not.

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Q. You have a large negro population in Arlington Heights? A. No, we don't have a negro population.

Q. You do not have any, do you? A. No, we do not.

Q. Do you think there would be a difference in administering an all-white school district and trying to integrate one, or desegregate one that has been segregated? A. I think there is a difference, certainly, but the principles and goals should be the same.

Q. Have you had experience along this particular line? A. No, I have not.

Q. I believe the word "gerrymander" originated in Illinois, didn't it with Congressman Jerry—

The Court: That's Massachusetts.

The Witness: That's Massachusetts.

Mr. Rice: Well, it didn't originate here. It came from somewhere else.

Q. Your main criticism of the plan, as I understand it, Dr. Bardwell, you have stated, I think, that the school load, class load, pupil load per teacher is reasonably even. Your main criticism of it, then, is that it does not effect enough integration, is that true? A. I stated the question

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a little differently. I said that the boundary lines were drawn so that the majority of the schools remained highly segregated. That was my conclusion.

Q. Is your conclusion drawn from the exhibits which you prepared? A. Yes, sir.

Q. And it was not then drawn from a study of where the children actually live over the entire community? A. The children are located on my exhibits as close as possible where they live.

Q. But, by school? A. By school.

Q. But I am talking about you made no study of where the children lived in the community, regardless of what school they go to? You made no study of that at all, did you? A. Not independently, no.

Mr. Rice: We have no other questions.

The Court: Anything further, Mr. Williams?

Mr. Williams: No further questions, Your Honor.

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The Court: We would like to ask the witness one question: Dr. Bardwell, did your research indicate to you how many negro children at the present time of elementary school age live in that part of Lincoln School zone from the railroad to the western boundary of the zone?

The Witness: I meant to allude to that when I had that on the projector, because I realized that that question would come up. This exhibit here shows that, and I believe the total amount—seems to me there were twenty-nine children in there, but I couldn't be sure. This area here from the railroad to the western boundary of Lincoln, sort of a rectangular-shaped area—it would be right in this area

here. According to this exhibit, approximately thirty-five children live in that area.

The Court: Do your records show how many negro children of elementary school age live in the northern part of South Jackson School District be-

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tween a line extended from the present south line of West Jackson to the railroad and then following the railroad up to the west line of Whitehall, roughly a rectangular area there?

The Witness: I would have to take a minute to come up with a figure there.

The Court: All right, sir. Take a minute.

The Witness: Would you give me the northern boundary line of that area again?

The Court: The northern boundary would be the present southern boundary of West Jackson just below the actual location of the school. In other words, what the Court is suggesting the possibility of is this: We are considering now the amended plan as proposed by the defendants. The Court is considering the possibility of extending the south line of West Jackson, which is the north line of South Jackson, extending it directly east until it hits the railroad, and then follow the railroad up to where the railroad hits the west line of Whitehall, which is also a corner of the present West Jackson, and include that into West Jackson. It's a rectangu-

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lar shaped area. Let the Court come down here and show you on the map.

We are now referring to Exhibit 11. We have heretofore been asking you about an area presently

in the Lincoln School District, which is bordered by the railroad on the east, and the western boundary of Lincoln on the west, and you have already given the Court your estimation of the negro children of elementary school age in that area, which you say is about thirty-five, the best you can tell. Now, moving over here to the West Jackson and South Jackson area, you will notice that the south line of West Jackson and the north line of South Jackson, as you move east, get to a point and run directly north. Instead of doing that, if you extended that line directly east along Lafayette Street to the railroad and then followed the railroad in a northeasterly direction to the west line of Whitehall, which is also a corner of the present West Jackson School zone, and then include everything north and west of the

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line that we have just described in West Jackson, how many children would be included?

The Witness: My estimate there would be twenty-five, approximately, white children, and approximately thirty negro children.

The Court: All right, sir. We have nothing further.

Mr. Williams: I have some further questions, Your Honor.

Redirect Examination by Mr. Williams:

Q. Dr. Bardwell, when you stated your conclusion that these lines were drawn in accordance with racial residential patterns, did that include the white neighborhoods as well as negro neighborhoods? A. Yes.

Q. So that would it be fair to include from your statement that the white schools are drawn—not only are the lines drawn so as to maximize, minimize the number of negroes in white schools, but also to minimize the number of whites in negro schools? A. They would be together, yes.

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Q. And when you add to this latter factor the transfer system, what has that resulted in with regard to negro schools? A. Totally negro schools, as a result.

Q. Totally negro schools? A. Yes.

Q. Now, there would be a difference from zoning a segregated school system and zoning the type of school system that you operate. In other words, the problem whether or not you would have—you would consider race would be a difference in the zoning of a school system such as yours, which has no negro children and a school system such as that in Jackson, which has the two systems—that would be a difference, wouldn't it? A. Yes, it would.

Q. But, is that a relevant—is that an educationally sound, relevant consideration that should control the drawing of zone lines, Dr. Bardwell? A. I don't think it can under the laws—the way I understand the laws of our country.

Q. So that in drawing your conclusions with reference to the exhibits which you have prepared, you have used all of the relevant considerations which you understand

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to be lawful and educationally sound, is that correct? A. I looked at the situation and made conclusions. I have not made recommendations. If I were asked to, I think that would certainly be all of the things that I would try to consider in any kind of recommendation I might make.

Q. You did not intend to say that you couldn't, if you were asked by the Court or by the defendants to draw a

zoning plan for this school system—you did not intend to say that you couldn't do it? A. No, I didn't.

The Court: Do you want the job?

The Witness: I think that's a job for the local people to do that. I think certain suggestions and recommendations can be made, but that's a job of the people that are right on the scene.

The Court: Anything further?

Mr. Williams: I believe that is all.

The Court: All right, step down.

Call your next witness.

(Witness excused.)

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Mr. Williams: Call Mr. Porter.

ALBERT PORTER, the said witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Williams:

Q. State your name, age and address. A. My name is Albert Porter, age forty, and my address is 400 Lacomte Street, Jackson, Tennessee.

Q. What is your occupation? A. College accountant at Lane College.

Q. Are you a married man? A. I am married and have two children.

Q. And you are one of the intervening plaintiffs in this case? A. Yes.

Q. Were you present at the pre-trial conference last September when the Court directed the plaintiffs be given access to certain records of the school system? A. I was.

Q. Did you, as one of the plaintiffs, request me to at-

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tempt to obtain and engage the services of Dr. Bardwell and Mr. Herman to help us with this survey? A. I was.

Q. Did you, as one of the plaintiffs, participate in assisting Dr. Bardwell and Mr. Herman in connection with the formulation of this survey? A. I did.

The Court: Speak a little louder, I believe adversary counsel can't hear you, Mr. Williams.

Mr. Williams: Very well, Your Honor. I would like to ask whether or not the Court took that county exhibit back?

The Court: No, sir. We gave it to you. As far as we know, you still have it.

Mr. Williams: All right, sir. Here it is.

Q. There is attached hereto a letter a carbon copy of which was sent to the Court, and which was filed here on May 25th, a document consisting of several pages and purporting to be certain statistics regarding the enrollment of county students in the city school system of Jackson. Will you state what role you played in the preparation of

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that? A. I took the information that was secured from the yellow cards in the Superintendent's office. I counted each student by grade and tabulated this personally, myself.

Q. Now, the yellow cards in the Superintendent's office were, as you were advised by the Superintendent, represented what? A. The students from the county schools that were attending Jackson city schools.

Albert Porter—for Plaintiffs—Direct

Q. The students outside the city limits and residing in the County of Madison who were attending Jackson school systems? A. That's right.

Q. And you did obtain those figures and formulate them yourself and prepared that exhibit from the defendant's own records? A. That's right.

Q. Will you offer that in evidence as an exhibit? A. Yes.

(The document above referred to was marked Exhibit 20 to the testimony of the witness, and same will be found among the exhibits hereto.)

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The Court: You don't want to offer the letter?

Mr. Williams: No, I would like to detach that and return it to the Court, but I doubt that the Court will ever have any use for it.

Q. Now, Mr. Porter, I believe you have already testified that you assisted Dr. Bardwell and Mr. Herman in the preparation of the data for their exhibits, is that correct? A. Yes, sir.

Q. Is the data in this Exhibit 20 that you have just filed —is this data accurate? A. According to the count—

Q. According to the information that you obtained from the defendants' records? A. Right.

Q. Did you supervise the students who obtained the data for Dr. Bardwell and Mr. Herman for the preparation of their exhibits? A. Yes, I did.

Q. As just related by Dr. Bardwell? A. I did.

Q. You supervised that personally? A. Right.

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Q. And checked it for accuracy? A. Right.

Q. And you furnished them the information which they requested? A. I furnished Mr. Bardwell, yes.

Q. And was that information accurate insofar as humanly possible? A. Yes; according to the records in the Superintendent's office.

Q. And you then forwarded that information by U. S. Mail addressed to Dr. Bardwell at his address in Illinois, is that correct? A. Correct.

Q. Now, Mr. Ford, your children were among those children who applied to white schools last September? A. Yes, one child.

Q. What is his name? A. A girl—Portia Patrice Porter.

Q. In what grade? A. This is her first year.

Q. And she allegedly had free choice? A. Supposedly.

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Q. She registered in which school, now? A. In Whitehall.

Q. And how far do you live from Whitehall? Is it close to you? A. Yes; about the same distance as Lincoln.

Q. Equal distance from Lincoln, which is the negro school? A. Yes.

Q. And when did she register in Whitehall? A. When?

Q. Yes. A. The August registration day.

Q. It was on registration day? A. Yes.

Q. And a period of several days transpired, did they not, during which you had no notification other than she was going to be allowed to attend Whitehall? A. Yes—until Saturday, Saturday before Monday.

Q. You got your notice from the Superintendent on Saturday that your child was transferred back to the negro school on Monday, is that right? A. That's right.

Q. And that was true of the twenty-seven other, twenty-six other negro plaintiffs, intervening plaintiffs? A. I

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think that's correct.

Q. And many of them are not like you—those that lived up here (indicating), about twenty of them lived up here in this zone right up here that they changed after we filed our exhibit, didn't they? A. Yes, sir.

Q. And they were sending them all the way down to South Jackson? A. Yes.

Q. Well, after we filed our motion, did the School Board make any effort to change and accommodate these twenty negro children, these twenty-seven negro children? A. Not to my knowledge.

Q. As a matter of fact, they resisted our motion most strenuously, didn't they, insofar as you know? A. Yes, so far as I know.

Q. At least your child is still going to Lincoln School? A. Yes.

Q. Now, Mr. Porter, do you know how many negro children, all told, there are attending school with white children in Jackson? A. No, I don't know the exact figures. It's a hundred and something.

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Q. Approximately a hundred? A. Yes. I don't know the exact figures.

Q. There are better than three thousand negro children in the system? A. Yes.

Q. And approximately a hundred of them are attending white schools? A. A hundred or more.

Q. And none of the four thousand whites attending formerly negro schools? A. That's right.

Q. And the teachers are still segregated throughout? A. Yes.

Albert Porter—for Plaintiffs—Cross

Q. White teachers in white schools and negro teachers in negro schools, is that correct? A. Yes, that's correct.

Mr. Williams: I gather I am not to go into that question, though, Your Honor. We are still on just the gerrymandering thing, even though I have a plaintiff on the stand.

The Court: Well, if you have a situation where you have a witness who won't be available, the Court would indulge you, and let you bring out whatever

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you would like to bring out in connection with other issues. It's obvious we are not going to finish today, if the witnesss won't be available at a future time.

Mr. Williams: I imagine Mr. Porter will be available, Your Honor.

The Court: All right, sir.

Mr. Williams: That is all.

Cross-Examination by Mr. Rice:

Q. You spoke of the number of county students, Mr. Porter, that have come to the city. There are about four hundred city people that went to the county also? A. Well, I had no way of knowing that. The records did not indicate it.

Q. You don't know that? A. No.

Q. How much have you paid Mr. Williams for his services?

Mr. Williams: That is objected to, Your Honor. He is not required to state how much he has paid me.

The Court: Well, he is entitled to determine, since

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the plaintiffs are moving to be awarded attorneys'

fees, as we understand the law, they are entitled to determine whether or not they have incurred an obligation to pay a fee.

Mr. Williams: If the Court please, as I understood it, we were taking up these issues separately.

The Court: All right. If you want to object on that basis, the objection is good.

Mr. Rice: Then I would like to have the witness available.

The Court: All right. You will be available, Mr. Porter. Is that all?

Mr. Rice: That is all.

Mr. Williams: That is all I have.

The Court: Step down, Mr. Porter.

(Witness excused.)

Mr. Williams: I would like to call Mr. Merle Herman.

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MERLE G. HERMAN, the said witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Williams:

Q. Sir, will you state your name, age and address, please? A. Merle G. Herman, forty-six years of age, 412 South Steward Avenue, Lumbard, Illinois.

Q. What is your occupation? A. I am Assistant Superintendent for curriculum instruction for the Villa Park School in Illinois.

Q. Mr. Herman, how large a school system is that in which you operate? A. Approximately sixty-two hundred children.

Q. Will you state your educational and professional background, if you please? A. I have a Bachelor's degree from McKendree College, a small liberal arts institution, and a Master of Arts degree from Washington University in St. Louis, Missouri, and about fifty semester huors of graduate work beyond that taken at Washington University. My experience is comprised of three years of teaching

in a one-room country school; four and a half years in the Army; four years as Principal and then Superintendent of an elementary school district just outside of East St. Louis, Illinois; five years as Assistant Professor of Education at the University of Oklahoma; two years as Assistant Professor of Education at Wall State Teachers College in Muncey, Indiana, three years at the University of Illinois and three years in my present position.

Q. I take it you have memberships in the usual professional societies? A. Yes. My main concentration is the Association for Supervision and Curriculum Development, National Council for Teachers, Illinois Educational Association, National Educational Association and a number of others.

Q. Are there any other matters in your background which you feel might be pertinent in connection with the matters about which we will make inquiry of you in this investigation? A. During the period of time which I have been in college work, I have worked on a number of school surveys in a number of different states. I have worked with zoning problems as part of those surveys.

Q. Now, were you asked to participate with Dr. Bardwell in a study of the Jackson zoning, City of Jackson, Tennessee, zoning and transfer plan, to determine whether or not

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racial consideration had been indulged in in the preparation of these plans? A. Yes.

Q. Will you just state—explain to the Court the nature of your investigations and—well, before I get into that—perhaps I ought to get a little background.

Mr. Herman, what are the main considerations or bases for determining zone lines in connection with junior high schools? A. Well, the main consideration is to follow ordinarily the elementary school lines so that when elementary schools are then taken and six graders graduating go into junior high schools, then there is an integration of effort between the elementary schools and the junior high schools where orientation procedures might be developed, that is where sixth graders might go into junior high schools and get acquainted with it. The principals are able to work together in enabling a sufficiently easy transition from the elementary to the junior high school. Also from a guidance point of view, it is well that the schools have some associations that are teacher relationships and administrative relationships which should

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be developed between the feeder schools and the schools into which the children are being enrolled.

Q. Is geography particularly important or topography at the junior high school level? A. At the elementary school level you must make provision in your boundaries for conditions which might affect the children from a safety point of view, in terms of any considerations, distance considerations and so on; whereas this is not so true at junior high school level. At this level they are old and mature enough to take care of themselves on the streets and actually to be alone without other people walking with them,

and this type of thing. They are capable also of using transportation agencies, and, therefore, you don't pay too much attention to the ordinary barriers that you consider at the elementary school level.

Q. What about the distribution of teachers? A. Well at junior high school level and at elementary level as well, the distribution of teachers is important in terms of whatever characteristics are exhibited. Race is one of those factors, and I think it should be considered. Just as we would distribute anything, one should distribute the teachers in terms of what abilities and talents and characteristics

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they have so the school system gets the best distribution of those. I might mention another factor, and that is in relation to the race problem. I should think that parents would be affected strongly by the fact that you would have, say, a total negro faculty and total white faculty assigned to a school. There would be some general opinions and attitudes that would be held by parents as a result of whoever was teaching in that building. If you had a distribution in your faculty of the various talents and characteristics, then parents would not be likely to look upon the school as being different from another school and, therefore, want their children transferred from one school to the other.

Q. What you are saying indicates, in effect, in addition to what it actually says, that it also indicates that there is, in effect, a stigma attached to a school by continued teachers segregation, is that correct? A. Yes, this is according to whatever biases or prejudices that the parents or the people in the community may have.

Q. Would you say in a school system which had a record of two years of desegregation and all of the white children

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transferring out of the negro schools, would you say that

that indicated a favorable or unfavorable attitude? A. This would infer an unfavorable attitude on the part of these parents.

Q. And would you say that continued segregation of teachers would make this more or less likely to continue? A. It would maintain the status quo. Whatever that attitude structure is, it would remain, and perhaps be heightened somewhat.

Q. Would you say that continued teacher segregation is a characteristic, more or less, of a segregated school system? A. Yes. I think that research would bear that out.

Q. Now, have you looked at the zone lines for the City of Jackson junior high schools? A. Yes, I have.

Q. Based on the considerations which we have discussed, what are your conclusions regarding those zone lines? A. Well, there seems to be a very distinct tendency for the lines to follow the residences of negroes and whites—in other words, separating the two. Where there is a large negro population, there tends to be lines drawn to maintain segregation in the schools that serve those areas.

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Q. What would be the effect of free transfer system superimposed on—predicated on race and superimposed on those zone lines? A. Well, the transfer system ordinarily would operate just to maintain whatever the attitude structure is of the people who have children in those schools. If zoning would not accomplish what some people might consider to be a proper solution to their own personal problems, they could then use transfer as a means by which they could solve their problems.

Q. And thereby perpetuate segregation in the school system? A. This would totalize segregation.

Q. Has that, as a matter of fact, apparently been the case, in case of the elementary school grades which have been desegregated in the City of Jackson School System? A. It isn't total, but it is close to being total, and at the junior high school level it is apparently true.

Q. Now, Mr. Herman, will you state whether or not the proposed junior high school zoning plan that you have

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mentioned violates the principle that you have suggested of feeding from elementary school zones? A. Yes, it does, because the lines of the elementary schools are not consistent with the lines which separate the zones of the junior high schools.

Q. Have you formulated any thought on your own about a more adequate zoning system for the junior high schools based on that principle? A. Yes. In looking at the business of establishing feeder schools and looking at the capacity and enrollments of the present schools, there are some clusters which, of course, are subject to the attitudes of those who are doing this, but there is a general clustering picture which could be presented, not necessarily as a hard and fast thing, but as an example of the general idea, which I think is proposed by the principle of certain schools feeding into certain junior high schools.

Q. You have some exhibits also that you would like to show at some point in your testimony, and, if so, if you will advise me, I will give you an opportunity to do so, if you think now would be a good time. A. Fine. I could show those right now.

Q. Were those exhibits prepared as outlined by Dr. Bardwell? A. Same procedure. This, again, is a basic map

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which we have been using. Now, in order for you to get

some idea of what I have been talking about, I would like to drop over the map the total junior high school enrollment in the district. This is the negro enrollment for junior high school children. Now, if you look at this closely and then you watch as I drop over the proposed alignments, you see how the alignments in general tend to follow the pattern of negro students in the community. One of the things that should be noted is there is a large group of children here who are attending Merry Junior High School. All of the children who are on here are all attending Merry Junior High School at this time or have been during this past year. Now, this is one thing interesting to know, especially the children who are outside the line here, and who are outside of the lines over here (indicating throughout).

Now, here is the white enrollment—here is the white elementary, and you notice the pattern again, and you notice some of the empty spaces in here. This is sort of an empty area in here, and there is an empty area right in through here. Now, again, if I drop this pattern over, that is the

Merry Junior High School lines, you again see how those lines tend to follow or take in those open areas which I pointed out. Now, if we put the combined enrollments on the sheet and then look at the picture, you again see how the lines tend to follow the pattern which I mentioned before. There is a general pattern, it seems, for negro children to attend Merry Junior High School and for white children to attend the other two junior high schools.

This is Exhibit No. 20. Do you have any other questions on that?

Q. No. I believe you have another exhibit prepared. A. Yes. Again we have the basic map as we have looked at it before. Now, here is Jackson Junior High, and the children

who attend Jackson Junior High are shown here, that is the white children. You can see there is a number of white children who are living outside of this particular area who do come in here to go to school. In other words, they are transferring out of what may be classified as negro areas or areas where there are negro children, and they are coming into this building.

Now, here we have Merry Junior High again and this —206— is similar to the one we projected before. Now, let me drop these two down—I should show Tigrett as well. This is Tigrett, and again you will notice outside of Tigrett there are white children who are transferred in this school for some reason, but they are from outside the zone and are attending Tigrett Junior High. Now, if we drop all of these on here, and again you look at the zone lines, you again see the picture, which gives you a look at the total district in terms of white and negro children and where they live and where they attend school. It is an accepted fact here, I think, that white children attend white schools and negro children attend negro schools.

Q. With a continued transfer system in the City of Jackson, is it along the lines of an absolutely free transfer system superimposed on that zone system based on race, even though it works both ways—is it your opinion that the condition of segregation will continue to exist? A. Yes.

Q. Well, the zone lines have contributed to that condition of segregation? A. Yes. The zone lines would contribute to it and where they are not effective the transfer system could be used for that purpose.

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Q. And those dots, I believe, on there, just as on the other exhibit, represent the general area where five negro or white children respectively live? A. Yes. The five children would be clustered around where the dot is placed.

Q. Do you have any further exhibits to show on that machine? A. No, that is all.

Q. Would you take the stand again, please, Mr. Herman.

I want to digress just a moment. I believe you stated that you had some thoughts about the way junior high school lines could be drawn without taking race into consideration. Will you state that to the Court? A. Well, first of all, I assume that there would need to be some changes in the elementary school zoning, whatever they might be.

Q. What is wrong with the elementary school zoning that seems apparent to you, based on what you know of it and what you have heard here today? A. Well, the elementary school lines are built in such a way that they tend to promote segregation. One can never deal with the motivation behind them. It is just an apparent type of thing

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that strikes you when you look at the information that we have put together.

Q. And you say that affects the drawing of the junior high school lines? A. Well, yes. The thing is that the present elementary school lines are not consistent with the junior high school lines. I consider it is a basic violation of the principles that we have mentioned before. The fact is that elementary schools, as they are drawn, even if they were centered and clustered to feed into junior high schools, would not facilitate integration as such.

Q. Now, when you say facilitate integration, do you mean by that—well, state what you mean by that. A. I would say that the proper districting of the schools in terms of basic principles, such as the idea that the distance a child lives from the school being an item of priority in assigning a child.

Q. And not whether or not he is negro or white, is that correct? A. Correct.

Q. What would you propose, assuming that a compact, that the elementary lines were drawn in compact areas about the schools as was indeed suggested by the Supreme

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Court in the Brown case? A. Well, in clustering the zones around the junior high schools as one kind of pattern that could be developed—Parkview, Washington-Douglas and Whitehall tend to fall into this area around Jackson Junior High School. They are close to it. They could be good feeder areas, and I am assuming again that the elementary zones would not be exactly as they are at present, but that area in there would tend to be a good feeder zone for Jackson Junior High. In terms of numbers of children, there would be consistency here too. There wouldn't be overloading of the capacity of the building. Highland Park, West Jackson and South Jackson might be appropriate for Tigrett and Alexander and Lincoln appropriate for Merry Junior High School. These are three different cluster patterns that could be developed.

Q. In your opinion would that be the way that the junior high school zones would be developed objectively, without regard to the racial character of the neighborhood? A. Yes, and not only that, but from an educational point of view, it would be sound.

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Q. Why? A. Because of the possibility of developing this interlocking relationship between feeder schools and the schools into which the children are going.

Q. Now, going to the question of the country transfers, I believe you reviewed the information on that which has been introduced here as Exhibit 20. Will you take a look

at Exhibit 20, and make sure it is the same thing that you have reviewed, and then state your conclusions in reference to the handling of negro and white students with regard to county transfers as they might affect the zoning problem? A. I have taken these figures and done a little bit with them, which might be somewhat interesting. For instance, Alexander, which is formerly a white school, a hundred and sixty-nine white children are transferred there from the county and no negro children. In Highland Park three white children; no negro children. In Parkview, fifty white children, no negro children. In West Jackson, seventy-one white children; no negroes. In Whitehall, twelve white children and no negro children. These are formerly white schools and no negroes from the county have been placed in there, but a considerable number of white children have been transferred to those buildings. At Lincoln, which

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is primarily a negro school, no whites, but one negro is there. In South Jackson, no whites; seven negroes. In Washington-Douglas, no whites; no negroes. But, here again, we have only negro children who are transferred from the county into these buildings. Jackson Junior High School has thirteen white children transferred from the county and no negroes. Tigrett has fifty-five white children and no negroes. Merry has no white children and four negroes transferred from the county.

Q. What does this evidence about the policies of the School Board in assigning county children to the city schools? A. Well, there is a pattern here which is a total pattern—no negro children are assigned to former white schools, and no white children are assigned to former negro schools. Also, there is an intimation, at least, that

county children are given priority over children who actually reside within the district in terms of assignment, although we aren't dealing with transfer problems, transfers we have studied have been refused into some of these schools from within the district, but county children have been transferred.

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The Court: You say within the district, you mean within the city?

The Witness: Yes.

By Mr. Williams:

Q. And to the extent that the Superintendent, as you heard him on the stand, gives as an excuse or failure to adjust zone lines into compact areas, that there might result a lack of capacity into the schools, does this racial transfer policy have an effect on that? A. Yes. There is a large number of transfers, for example, in Alexander—a hundred and sixty-nine white children are transferred from the county into that building; that's a very large number of children for one building.

Q. A hundred and sixty-nine out of some four hundred total enrollment? A. I will check my figures.

Q. Was it Alexander? A. Yes.

Q. A hundred and sixty-two—well, that is all right.

Now, how do you compare the handling of transfers within the school district with handling of county trans-

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fers? A. Well, in general, many transfers of negro children to white schools were refused, but at the county level, it seems—I don't know how many might have been refused, but all white children went to all-white schools.

Q. Suppose that the Court—I suppose you are aware—you have read the Court's original decree in this case, have you not? A. Yes.

Q. And you are aware of the Court's order that regardless of any transfers that a child who resides in the district would be entitled, would have an absolute right to attend the school within his district? A. Yes.

Q. Now, if racial zone lines were drawn so as to affect the racial character of that district, and then the question of capacity were raised, capacity of school with regard to these zone lines, what would be your conclusion about this? A. Well, in the main, virtually all of the schools, with the exception of Merry and South Jackson have some room in terms of capacity. In fact, there is quite a bit of flexibility, which would enable a great deal of transfer of some kind to take place in the district without affecting capacity levels,

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without even approaching capacity levels. Some schools that accept a relatively small number, but many of them could take a large number of children in terms of transfer.

Q. So that transfers do not—so that school capacity does not appear to propose a considerable problem in connection with re-zoning of the Jackson School System, is that correct? A. No, it doesn't.

Q. What factors do you deem to be important in connection with them? A. With the zoning of Jackson?

Q. Well, that's right, you weren't going to get into elementary schools, were you? A. No.

Q. In reference to this matter of leaving school children in schools and transfers, what is your educational views as an educator concerning the idea that children should be permitted to remain in a school that they have historically attended, or where their brothers and sisters are

already attending? A. Well, I know there was a stipulation that children might attend a school if their brothers

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and sisters were in attendance and in a building.

The Court: Not in the Court's decree—in what apparently was actually done, you understand that?

The Witness: Yes, sir.

Such a principle being applied in this case would mean in many cases that integration would be forestalled in a way and that whatever the status quo is would tend to remain for a considerable period of time. I have an unusual family in that I have six children, which most people do not have, but if you compute on the basis of my own family and the distribution of children, if my youngest child attended the same school as my oldest daughter, then that would be twenty years at one school.

Q. This policy, in effect, is tantamount to a grandfather clause? A. Well, it represents the same kind of idea.

Q. Is there anything that I have overlooked that you would like to say? A. Well, the junior high enrollment for the next four years will tend to remain constant at

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about one hundred children above the present enrollment.

Q. How do you establish that? A. Through the facts and figures which were in one of the replications. If I remember correctly, there are five hundred and eighty sixth-graders in the school system at the present time. It would be about six hundred and fifty to six hundred and seventy-five for the next four years or so. So you have a constant factor here involving the junior high enrollment. There is

a possibility, of course, of a building being built in outside areas, as Mr. Huckaba said, but the known facts are that the enrollment would be about the same for four years, about a hundred above the present enrollment.

Q. I am glad you mentioned that. I am going to get into elementary schools a little bit. I will ask you whether or not, based on Mr. Huckaba's figures, you took a look at the known figures and the predictions with regard to increases in elementary schools within the school districts? A. In looking at the number of children enrolled by grade level, it appears that the greatest changes will occur in South Jackson, that is South Jackson will tend to grow a little faster than the other schools. Whitehall also will

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grow, and it would almost double by the time you go down to the first grade level.

Q. That was South Jackson and what? A. South Jackson and Whitehall. I don't remember what the others were. Could I get another sheet that I had there?

Q. Yes. A. South Jackson, Whitehall, Parkview—some growth in Parkview and Highland Park would show some growth. According to the known facts and figures again, the overall enrollment change varies only approximately a hundred and fifty to two hundred in the total school system from sixth grade to the first grade. Two hundred children distributed among all the schools is a relatively small number.

Q. Distributed among eight schools? A. Yes.

Q. One more thing—what about children—what about these annexed areas in the county? You have heard testimony regarding that. Does that tangibly and significantly affect the problem of zoning now? A. Well, the construction of a school, as was mentioned, will affect enrollment.

There isn't any doubt of that, because people will tend to

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build around wherever a school exists. But in the outer areas it would be difficult to predict where the building is going to take place, and even if you did, you couldn't predict how much, and if the enrollment were substantially increased because of the construction in the outer reaches of a community, ordinarily you would build schools or small feeder schools in those areas.

Q. I believe you have already stated that in your opinion continued faculty segregation would be detrimental, would not be educationally sound? A. I agree with that, yes.

Mr. Williams: You may cross-examine.

The Court: Well, gentlemen, it is 5:00 o'clock. Obviously, we can't finish this hearing today. The Court would like to accommodate everybody possible.

What about next Friday? We have cases set all during the week next week. Can you come back next Friday, Mr. Williams?

(Unreported discussion.)

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The Court: On the record. Let's set this hearing tentatively for next Friday and then if it turns out that someone can't make it, we will move it up. We would like to hear from you as soon as possible as to whether you can be here, and then if you can't we will set it up for the following Friday.

Mr. Clerk, adjourn until 9:30 Tuesday morning.

(Adjournment.)

Merle G. Herman—for Plaintiffs—Cross

* * * * *

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Mr. Rice: We submit to the Court that his testimony in regard to the faculty integration and the effect upon children and parents and what-not is not substantiated by his qualifications in this matter.

The Court: Well, I think it would go to the weight of it, probably, Mr. Rice.

Mr. Rice: All right, sir.

Q. Now, Mr. Herman, before we get into the question of Jackson, I want to talk to you just a little bit about your own area in Illinois. I believe you say you are from Villa Park? A. Yes, sir.

Q. Now, that is, I believe, a part of greater Chicago, is it not? A. It is a suburb of Chicago, a western suburb.

Q. I have here a very official Phillips 66 road map, and it looks to me like Villa Park is right at the edge of Chicago in a westerly direction? A. Yes. There are two or three different communities between Chicago and Villa Park.

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Q. Oak Park, Melrose Park, North Lake, and perhaps Villa Park? A. Well, Elmhurst, which is a fairly large community, is also in between. There are other communities which I do not think would be listed on the map.

Q. Now, the gentleman that testified here, Dr. Bardwell, from Arlington Heights—that is also a suburb of Chicago, is it not? A. Yes.

Q. I will ask you, Mr. Herman, if in Illinois your various communities touching Villa Park and Arlington Heights receive state aid in the operation of their schools? A. Yes, sir.

Q. And it is part of the overall school system of the state, is it not? A. Yes.

Q. Now, from time to time, would Villa Park, for example, transfer a student with, say, Addison? A. Yes.

Mr. Williams: I didn't hear that last question. Transfer a student with what?

Mr. Rice: Transfer a student with Addison.

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The Witness: Yes.

By Mr. Rice:

Q. And from time to time, would Villa Park exchange a student with Lombard? A. Yes.

Q. They are not, however, in your district, are they? A. Yes. About a fourth or fifth of Lombard, maybe more, would be in the Villa Park district. The school district is School District 45, and really is not Villa Park School District, as such, officially titled.

Q. Would School District 45 exchange students from time to time with adjacent school districts? A. Yes.

Q. Now, in order that we will know somewhat about what we are talking, how many negroes do you have in your school district? A. I would think maybe ten or twelve, somewhere in there.

Q. And how many children are in your school district altogether? A. Sixty-two hundred.

Q. Maybe we ought to send Mr. Huckaba up there to help you. Do you think that would be a fair statement?

Merle G. Herman—for Plaintiffs—Cross

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Mr. Williams: That's objected to, if Your Honor please.

The Court: Objection sustained.

The Witness: I might say in this respect, I have worked with a large number of communities which did have a substantial negro population—Oklahoma City, New York City, which has a large number of negroes. The question, as far as I am concerned, is not that I haven't worked with school systems that had negro population.

By Mr. Rice:

Q. Well, let me ask you this question: You are having a good deal of unrest in Chicago and its environs over the question of the mixing of the races in the schools, aren't you?

Mr. Williams: That is objected to as being incompetent and irrelevant.

The Court: What is the purpose of that, Mr. Rice?

Mr. Rice: I want to see what he has recommended in Villa Park to alleviate this condition.

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The Court: Objection overruled.

Mr. Williams: May it please the Court, this witness has not testified—in the first place, community hostility is not a part of this—

The Court: (Interposing) We recognize that.

Mr. Williams: And in the second place, this witness has testified only to the question of technical problems of zoning and the question of teacher-desegregation and its impact on education. The

question of unrest in a community in Chicago or Villa Park is entirely irrelevant to any issue upon which he has testified.

The Court: Well, we think this, Mr. Williams: We think in cross-examining an expert witness, you can test him by going pretty far and broad on what he thinks about different issues which related to that one, which is testified about, and in addition to that, if Mr. Rice here goes outside his direct examination, he will make the witness his witness, and he can't lead him any further. That's the rule in Federal Court.

By Mr. Rice:

Q. Mr. Herman, since your school districts interchange

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students in the Chicago area and you have about four million, three or four million people there, don't you? A. Yes.

Q. My only question to you when you have a school district of sixty-eight hundred people and only ten negroes in it, what have you done to correct that situation in your district? A. Well, we do not have substantial negro population, but we do expect a negro population within the next few years. We, in our Board of Education, have planned for this influx. We have built our policies on this expectation. We have adopted materials in the schools already. We have adopted multi-ethnic materials, which would attempt to be a forerunner here. In other words, we have made plans for this to occur, and we expect it to occur within the next five years.

Q. My question to you is, what have you done to bring it about now?

Colloquy

Mr. Williams: That's objected to, if Your Honor please. I don't see how that is relevant, or how a School Board anyway would be expected to try to change residential patterns.

Mr. Rice: If it please the Court, that's the very

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thing that Mr. Williams is objecting to here. The negroes in the City of Jackson live in residential areas just exactly like they do in Villa Park.

The Court: We understand that, but how would it be relevant, what the town of Villa Park has done with respect to effecting affirmative integration in their particular instance?

Mr. Rice: Because that's what this witness tells us we should do, and how to do it, and we just want to know if he practices what he preaches.

The Court: You mean you are asking that as a matter of impeachment of his statement?

Mr. Rice: It goes directly to his qualifications as an expert.

The Court: Well, that's borderline as to relevance, but we believe it is close enough, so we will let you pursue that.

The Witness: Where I happen to be employed as of here and now isn't the relevant thing. After all, people move from one job to another, and because your present job is not devoted to the problems of

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segregation, it doesn't mean that you have never dealt with them, or worked with them, or had anything to do with them.

By Mr. Rice:

Q. My question is that you are now Assistant Superintendent of School District 45 in Illinois? A. Yes.

Q. And, as such, you have the power to do these things that I have just asked you to bring about integration, do you not?

Mr. Williams: That's objected to. He says, "Do these things". I don't know what he is talking about.

The Court: I think what he is referring to is taking affirmative steps to see to it the schools are integrated.

Mr. Williams: May it please the Court, if there are only ten school children, ten negro children in the district, I can't understand the relevancy, or what basis there would be—

The Court: (Interposing) Mr. Williams, the witness has testified that in his opinion as an expert it

is desirable to affirmatively bring about integration, and that's a view that is strongly held by many people in this country, and you have argued the views to the Court yourself. Now, Mr. Rice is asking him if he believes in that, what has he done to see to it that they have more affirmative integration in his district. The answer may be that he has done nothing and could do nothing because of the actual situation, but Mr. Rice is entitled to ask him the question.

Mr. Williams: If Your Honor please, I would like to say just finally that this witness is testifying as an expert educator. He is not testifying as a politi-

cian or real estate man, and the question whether or not there should be more negroes residing in School District 45, I respectfully submit is an entirely irrelevant question.

The Court: That's not the question. Conceivably, they could make an effort to go outside the district to get some negroes in the district to accomplish integration, and Mr. Rice is asking him about that,

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and we think that he can ask that.

Mr. Williams: Very well, Your Honor. That is exactly what I object to, though.

The Court: All right, sir.

By Mr. Rice:

Q. Mr. Herman, as Assistant Superintendent of School District 45 in Illinois, you do have something to do with the policy making of the school district, do you not? A. Yes, sir.

Q. I believe my question to you was, what have you done to accomplish greater integration in School District 45? A. Well, as I pointed out, we really do not have the problem. All we have done is set up a policy structure which will handle the problem when it arises.

Q. But, just exactly when that will occur, you don't know? A. It will occur within the next five years.

Q. Have you made any effort at all to accomplish greater integration in School District 45? A. We haven't needed to. We only have ten to twelve children, and they are thoroughly integrated.

Q. Well, I realize that a good many experts in this field are situated like you are, without the problem, but you have

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made no effort at all to do anything about it? Have you recommended anything? A. Policy structure. This is the only role which an administrator has in the school system, is development of policy, and then the pursuance of it.

Q. Now, of these six or eight children that, negro children, that you have in your district, how many do you have in any one school? A. Most of them reside in one school area.

Q. Who is your Superintendent there? A. Mr. Crandall.

Q. Let me ask you this, Mr. Herman: I would like to know, and I expect the people in Villa Park would like to know—what has Mr. Crandall done about this? A. He, too, has worked on policy structure.

Q. Has there been any objective move made, actual concrete move made to accomplish greater integration through changing your district? A. Only policy structure.

Q. With that many negro students in Chicago, why haven't you, Mr. Herman? A. I have nothing to do with Chicago.

Q. Well, with the adjacent community. A. I do not

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reside in Chicago. It has nothing to do with our school district. We are entirely separate and apart from Chicago.

Q. How far do you live from the nearest negro community if you have such there? A. I would say five miles.

Q. What community is that? A. I think it would be Maywood.

Q. Well, what effort have you made with Maywood to interchange students to accomplish greater integration?

Mr. Williams: If Your Honor please, I assume that my original objection obtains to all of this line of questioning?

The Court: Yes, sir, it certainly does, absolutely.

The Witness: My job is within my own school district. I have nothing to do with other school districts.

By Mr. Rice:

Q. Except Jackson?

Mr. Williams: That is objected to, if Your Honor please.

The Court: I believe that is improper, Mr. Rice.

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By Mr. Rice:

Q. How did you get interested in Jackson, in the first place? A. Would you like to hear the whole story?

Q. Yes. A. I was called by the same gentleman who called Dr. Bardwell, Mr. Leberman.

Q. Now, let me interrupt. Who is Mr. Leberman? A. I think he is Director of Professional Studies at Rhode Island College in Providence. He called and asked if I would participate as an expert witness in a case involving integration in Jackson. I told him that I did not have the time, and that I didn't think I would get involved. He said, "Well, think about it, and I will call you back tomorrow."

That evening, I went to meet with a church group which meets regularly, and in the course of the discussion, it dealt with what one's Christian commitment in a community is, and in this discussion I posed them with this particular problem, and I had a number of times intimated to them that in the group that I did not approve of some actions which were being conducted in society, that I felt

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when a group had a problem, that the problem should be solved in the courts, and they pointed this out to me, because I had brought this up before. They also pointed out to me that I should do what I thought I should do in terms of my Christian commitment. The next morning when Mr. Leberman called me, I had made up my mind.

I said, "Yes, I will participate, but you must remember that whatever I do is completely based on my own opinions. I have no obligation to anyone at any time, anywhere, and I will deal only with the facts as I see them."

Subsequent, Mr. Williams called me to ask me if I would participate.

Q. Now, are you paid for this service? A. Yes.

Q. What will you be paid? A. I have not been paid yet. I have only been paid the expenses which I have incurred, and I have submitted a bill to Mr. Williams.

Q. By whom are you employed? A. Mr. Williams, as far as I know.

Q. You did not talk to the gentleman that Dr. Bardwell

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talked with from the National Association of Legal Aid Society? A. No. I might say the first time I met Mr. Bardwell was that he called me and told me that he understood the two of us were going to go to Nashville, and he said he would meet me at the airport, and that's the first time I met him.

Q. He got in touch with you, Dr. Bardwell? A. He called me, yes.

Q. Now, this religious meeting that you attended, that was in Villa Park? A. Lombard.

Q. How many children do they have in the schools of Lombard? A. I haven't the slightest idea.

Q. How many negro people live in Lombard? A. There are some. I have no idea. I have very little contact with the village of Lombard, outside of my church affiliation.

Q. To what church do you belong? A. The First Methodist Church.

Q. That's a fine church. I belong to that myself.

How many negroes belong to the First Methodist Church in Lombard?

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Mr. Williams: If Your Honor please, we are going far afield.

The Court: Objection sustained.

By Mr. Rice:

Q. Now, let's see the view-graph here. Mr. Herman, you stated in your direct examination that at the elementary school level you must make provision in your boundaries for conditions which might affect the children from a safety point of view in terms of any consideration, distance consideration and so on; whereas, this is not so true at junior high school levels.

Now, are you acquainted with the street structure within the City of Jackson? A. To some degree.

Q. Would you agree, or disagree, that the boundaries of the elementary school districts which are shown on there in green, such as this (indicating) by and large are major street thoroughfares? A. On some occasions, that's true, and on others, it is not true.

Q. Then, where is it not? A. The one point which we

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discussed before for this area right in here, for example. The children who live on the other side of this area, for

example, attend over in here. There are situations of that kind. (Indicating throughout).

Q. My question to you is which one of these boundaries is not a major street? I realize that you object to the way that it transfers pupils. A. It isn't only just streets. There are other matters that you take into consideration. There has been some consideration of this in other areas where this is not particularly important.

Q. What is the boundary between South Jackson and West Jackson district, do you know? A. It's this way here, this street here (indicating). It is a major street.

Q. Well, for example, what is the boundary between South Jackson and Whitehall—I mean South Jackson and Washington-Douglas—South Jackson and Whitehall and between Alexander and Lincoln? What is that boundary right there (indicating)? A. It's a main thoroughfare and railroad tracks as well.

Q. Then I will ask you if the boundary between Lincoln and Alexander running to the north, if that is not a rail-

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road track? A. It is a railroad track, yes.

Q. Well, you say in there that we should take into consideration thoroughfares of that type. Now, have we not done that? A. Well, let me point out to you that inconsistencies are involved here.

Mr. Rice: If the Court please, I would like to have him answer the question yes or no, and if he wants to explain, then he can explain any way he wants to.

The Court: What was the question?

Merle G. Herman—for Plaintiffs—Cross

By Mr. Rice:

Q. If we have not used major thoroughfares in dividing those districts. A. You have. But you have not been consistent in the use of them. For instance, you used the railroad tracks, and then you suddenly use a thoroughfare instead. In this case, for example, you use the railroad tracks out here where the population is rather thin. Then you suddenly make a move over here to take advantage of what you call a major thoroughfare, but you have not continued to use the tracks, and in some cases, without too

much consideration to the population that is involved—for instance, if you are going to use the tracks, then you would use the tracks. If you are going to use a major thoroughfare, you use that major thoroughfare. Now, there is a choice of which major thoroughfares you would use as well, which is another kind of problem. You have deviations from the use of them. Here are deviations from the use of this one, for example (indicating).

Mr. Williams: Indicate it, if you will, sir, for the record, when you refer to something on the map, indicate the line you are referring to.

The Witness: I am not too familiar with the street names.

Mr. Williams: Well, at least indicate the lines between which school districts you are talking about.

The Witness: Well, this is between Alexander and Highland Park. There has not been a continued use of the same thoroughfare, but a deviation from it, and that thoroughfare has not been followed as the line continues south where two—this is double

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thickness here, so I can't see the name of the street here, but I am just trying to make the point that you have not really used those consistently.

The Court: On that point there, Mr. Herman, that line between Highland Park and Alexander, according to that map, there are no negroes living either side of the line, so you don't mean to indicate that line was drawn that way to effect maximum segregation?

The Witness: I am dealing with the matter of establishment of the boundaries without regard to race as such. I am merely pointing out if you are going to use a boundary, you should use it consistently.

The Court: That might be important to you as an educator, but there is no question but that Jackson can draw the line where they want to as between white people. The question we have to determine is whether or not they have so drawn their lines between negroes and white people so as to effect an unconstitutional gerrymandering.

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The Witness: Well, the point is involved—with the point is involved here, if you use a feeder system in the junior high schools, then it would make a difference as to where the elementary school boundaries are.

The Court: Well, go ahead.

Mr. Williams: Well, moreover, if Your Honor please, I submit that you can't determine it solely on the purpose of whether or not the line runs

through an all-white neighborhood, because you have the question of school capacities.

The Court: That is what Mr. Herman was saying—if you are going to have the feeder system, this question of where the lines are drawn will affect that. But the Court's comment was if we get to investigating everything at that level, this whole question as to gerrymandering can get complicated.

Mr. Williams: I would submit that the line might be drawn one way in an area where only white children are involved as between this school in order to achieve a certain effect and another way in a school area where there is a mixed population, taking

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into consideration the capacity in the school.

The Court: All right. Go ahead, Mr. Rice. Go back to your cross-examination.

By Mr. Rice:

Q. Mr. Herman, you looked at the school load, teacher load, class load background that we filed, I believe, did you not, in connection with the elementary schools? A. Yes.

Q. Now, if you will just forget the race situation for a moment, the balance was fairly good, wasn't it? A. Yes.

Q. Now, when you started the districting of school districts, if you lined up ten superintendents and each one to do it individually, you would get different plans from each? A. Yes.

Q. One man might take them one way, and one man might take them another? A. This is true. But the deviation might not be as great as one would think.

Q. Now, directing your attention a moment—you singled out, for example, the departure from what is North Royal and South Royal Street as a boundary between Alexander

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and Lincoln. Now, the figures show that Lincoln is full, do they not, right now? A. I will have to refer to my notes.

Lincoln has a capacity, according to the figures which we received from the school district, of eight hundred and seventy-five, and the enrollment presently is six hundred and seventy-two; so you have an under capacity of two hundred children.

Q. That's gross capacity—assuming they were divided in the places equally so that you could put them in there. A. These are the capacity figures given by the school system.

Q. Now, Alexander School district is what? A. It has a capacity of seven hundred and fifty. The enrollment is six hundred and fifty-two. You have an under capacity of just about a hundred children.

Q. About the same thing. A. No. There is a difference of a hundred under capacity in one, and two hundred under capacity in the other.

Q. If they are both under capacity, what would we accomplish by moving a hundred over to another school? A. Well, if you are going to use the main thoroughfares

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as the line, then you should continue to use the main thoroughfare. This school, of course, is sitting here right on the edge (indicating).

Q. That's a junior high school. A. I know it is. But it is in a relative position to be discussed, and this school sits right over here on the edge of its own district (indicating).

Merle G. Herman—for Plaintiffs—Cross

Mr. Williams: Can you, please, sir, refer to the names of the schools if you can recall them, Mr. Herman?

The Court: You say that Alexander is on the edge of its district.

The Witness: Well, let me explain here. Let me get my schools straightened out.

The Court: Would this help you any (indicating)? I have a map here.

By Mr. Rice:

Q. This is Lincoln, Alexander, Whitehall, Parkview, Washington-Douglas, South Jackson, West Jackson (indicating). A. Well, let's just take the distance factor involved here. Here is actually a main thoroughfare—main railroad, main division line (indicating) that could have

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been used. Actually, there is a deviation from it coming over here to the west. Now, I see no reason for this line to go over here like this when the distance for these children to attend this school was actually increased and the distance here is much shorter anyway (indicating). A thing like this just seems to me to be somewhat out of line.

Mr. Williams: May it please the Court, I don't want this to become burdensome to the Court, but I would like to ask Mr. Herman—he has given important testimony there for the record, and he hasn't identified a school or a line in connection with it. If the Court will permit, I would like that to be done.

The Court: What he is saying, basically, as the Court understands it, is that the railroad on the west

side of the western extremity of the proposed Lincoln zone, which is west of the railroad, in his view should be put over into the Alexander School district, and use the railroad as a borderline between Lincoln and Alexander all the way down to the north line of Whitehall.

Mr. Williams: Yes, sir, that's what he has testified.

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By Mr. Rice:

Q. Would you agree, Mr. Herman, that a man of the same qualifications that you have might just as well adopt a contrary view? A. One could adopt a contrary view, but he would have to have a reason for it.

Q. It's just a matter of opinion, isn't it? A. No, I wouldn't say it is a matter of opinion. You are either using a type of geographical item as the basis for your decision, or you are not.

Q. Now, then, all of the exhibits which you filed—yes, you testified to them, that you and Dr. Bardwell filed here, as far as you are concerned, were predicated upon the educational practice of feeding junior high schools, is that not true? A. Those exhibits weren't predicated upon it. Those exhibits were to indicate the facts as they exist, where the population was, and where it was attending school. Those exhibits did not, in any way, set up a plan for the districts to feed anywhere.

Q. Well, getting back to the exhibit, you say it reflected where the people live and where they attend school. Now,

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that's not the same thing. Now, exactly what was on your exhibit? A. We had the school zones and where the children lived who attended in a particular school, that is we

here (indicating). They go up the railroad to Highland, up Highland Avenue to Fairmont and out to Royal and on out of the city. The district line between West Jackson and Merry follows the G M & O Railroad from the south city limits to Preston, out Whitehill to the city limits. and

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all those are major streets or railroads. What would you do with it? A. As I have testified before with junior high enrollment, you do not need to pay so much attention to geographical features, primarily, because the children are at an age level where they are capable of taking care of themselves fairly well on the streets and not only that, they should be in a position where they should be somewhat independent and should be taking care of themselves in regard to geographical obstacles and so forth. The fact is that this doesn't have to be the consideration. But there is the consideration of all the guidance functions which are related to elementary and junior high schools, the interrelated functions of the schools, which would, in general call for a general educational idea of feeder schools. This has been substantially my testimony previously, and I would have to support that idea again now, the feeder schools.

Q. I understand how you feel about the feeder schools on the junior high school system, but in the City of Jackson, we don't have that. We are concerned with the district boundaries betwen the junior high schools, and I wonder what you would do with it using the system we used. A.

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I am concerned primarily with the education of youngsters who are involved, and I think it is better practice to have the feeder system and, in fact, it is such a general practice throughout the United States, I wonder about its lack here

The Court: Well, Mr. Herman, understand we are only concerned here with constitutional considerations. This School Board can run this school system any way they want to as long as they don't violate the Fourteenth Amendment to the Constitution and, therefore, maybe you or a great majority of the education people think that the so-called feeder system into junior high schools is desirable, but there is no constitutional requirement that they follow any particular practice in education so long as it is not constitutionally discriminatory. What I think Mr. Rice is asking you is—looking at the proposed junior high lines and just considering the issue of gerrymandering, and, of course, we understand that takes into consideration several factors—natural boundaries, which you say are less important in junior high schools, you have all these factors that you take into consideration. But what I understood Mr. Rice to ask you is what is wrong with what they propose. How do you do it differently? Is that what you are asking?

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Mr. Rice: Yes, sir.

Mr. Williams: May it please the Court, the issue of gerrymandering may take into consideration the failure to use the feeder system.

The Court: Do you want to contend that they have to constitutionally adopt the feeder system?

Mr. Williams: No, I wouldn't try to coach my witness by arguing the case now, if Your Honor please, but yes, sir, that would be one of my contentions, in effect, that in the junior high system they have followed a—

have the Parkview School, for example, that is we have all the children who attended Parkview marked on those maps.

Q. So it was shown on there. In other words, what you have is the end result of the transfer plan and the Court's order allowing those were in school at the time the original order to remain there, plus those who lived there. You had the end result, and that is what was shown on your maps. A. The facts in relation to a child, to their attendance in a school zone.

Q. But what I said to you is right, isn't it? A. Essentially, yes.

Q. You stated (reading) "I should think that parents would be affected strongly by the fact that you would have a total negro faculty and a total white faculty assigned to a school."

Now, how did you know that? A. Well, there are studies which indicate this to some extent.

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Q. What studies? A. Well, I am not familiar with those studies. I have only taken the material out of administrative publications. The fact is, though, in any school district and from administrative experience, one can estimate that virtually anything in a school affects parental attitude toward it, parental cooperation and things of this kind.

Q. Now, have you checked over Jackson to see how it affects parents? A. No, I haven't. This is not really my job, as such; nor my testimony is not linked primarily with Jackson in this respect. My testimony is taken from general administrative direction as obtained from the literature.

Q. And did you make any of these studies yourself? A. No.

Q. Have you read any of these studies in toto? A. I have in the past, yes.

Q. Do you consider yourself an expert on this question? A. On parental attitude?

Q. Yes; about the race question. A. No, I do not, not in terms of parental attitude; that would be primarily in the realm of a sociologist.

Q. Is it of any significance to you that all of the newly

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admitted plaintiffs to this lawsuit are negro and are seeking admission to schools which have all white faculty? A. Would you repeat your question?

Q. Is it of any significance to you that the new plaintiffs in this lawsuit who are all members of the negro race are seeking admission to schools which have an all white faculty? A. It is of significance, yes.

Q. It didn't seem to deter them any, did it? A. I don't see that it should.

Q. Then the question of faculty makeup, I believe you said, you didn't see that it should—was that your answer? A. I don't think that should be the important element to them. People who are requesting entrance in a school are looking at the educational program which is offered, the facilities, it's an overall kind of thing, and I do not know what their primary motivations might be.

Q. And the faculty makeup had no effect on it, did it? A. I don't know.

Q. It didn't deter them from asking, anyhow, did it?

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Mr. Williams: Well, that's objected to, if Your Honor please.

The Court: Objection sustained on that.

Merle G. Herman—for Plaintiffs—Cross

By Mr. Rice:

Q. Mr. Herman, what is it that you are really concerned with in this lawsuit? Is it the mixing of the races? A. I am concerned with equal educational opportunity for every child in this country. I am concerned with basically the whole business of a child getting, not only equal opportunity to education, but the best education that a community can afford.

Q. Do you feel that that requires integration of the races? A. Under many conditions it would be necessary. As I understand it, the problem here is one of the Court having actually given an order to a school district in terms of desegregating its system, and the question is whether the school has done this, or has not. We have not discussed curriculum, so far as I know, nor teaching in the class rooms in any way, shape or form. If I were to testify on curriculum and teaching, then I would have made a thorough investigation of curriculum and teaching in the schools, which would have called for access to the schools, their programs, and actual observation of teaching and so

forth. I certainly couldn't have participated in such a thing because of the amount of time that would have been required.

Q. That question was not even projected to you, suggested to you. A. No. I have not worked with that.

Q. I mean there was no complaint registered to you with regard to the City of Jackson curriculum?

Mr. Williams: If Your Honor please, that is not before the Court. There isn't any question about curriculum except discrimination against negro chil-

dren in a curriculum, if you want to talk about that, in extra-curricula activity.

The Court: I thought there was some complaint about the actual curriculum in the schools that the majority of the negroes attend versus the schools where they have a majority of whites.

Mr. Williams: There was originally in this case, but not—

The Court: Not in this motion for further relief?

Mr. Williams: No, sir. The point here was dis-

crimination in extra-curricula activities and teacher professional activities.

The Court: All right. We don't have any question about curriculum itself, Mr. Rice.

By Mr. Rice:

Q. Since you are testifying as an expert, Mr. Herman, I would like to get just a little further into it. Do you actually understand the significance of the difference between compulsory integration and elimination of compulsory segregation?

Mr. Williams: That's objected to as being irrelevant and incompetent. This witness is not a legal expert. He is testifying as an educational expert.

The Court: Objection overruled. I think he can ask him if he understands the difference between those concepts aside from any legal definition of them.

Mr. Rice: That is all I want. I don't really think Mr. Williams knows the difference, but I want to see if Mr. Herman knows the difference.

The Witness: Let me begin by saying I want

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you to repeat the question, but I do not know the legal differentiation.

By Mr. Rice:

Q. So you are primarily interested in obtaining a mixing of the races in the schools, are you not? A. That would not be my intent. My intent would be for all children to get the best education possible.

Q. Well, now, would you not say, Mr. Herman, that that's entirely possible in schools in which segregation exists?

Mr. Williams: That's objected to as being incompetent and irrelevant.

The Court: Well, I think so. Here is the theory on which I think Mr. Rice is entitled to examine the witness along this line to some extent—he has testified about his opinions as to gerrymandering, and I think in cross-examining the witness and testing him on those opinions, Mr. Rice is entitled to find out if in drawing his opinion if there was gerrymandering here wasn't he basically concerned with maximizing integration as opposed to abolishing compulsory segregation based on race, and it is

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along that line that I think he is entitled to ask the witness this. In other words, that may be one of the things hat he has taken into consideration in giving his opinion that we have gerrymandering here, and I think counsel is entitled to ask him about it.

Mr. Williams: If Your Honor please, I would respectfully say that if he were of the opinion that segregation should be eliminated in the schools, certainly so, I feel—

The Court: (Interposing) Well, be that as it may, we think Mr. Rice's questions are appropriate up to this point.

Mr. Rice: Well, I believe I will withdraw the question.

The Court: All right.

Mr. Rice: Do we have the view graph?

The Court: Off the record.

(Unreported discussion.)

The Court: All right. Go ahead.

By Mr. Rice:

Q. Now, Mr. Herman, if you will look at that map and

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look at the Washington-Douglas School, which is shown in the bottom right-hand corner, I will ask you if it is not an almost unquestioned fact that no matter how you district that school, it will be predominantly negro? A. No, I don't agree with that at all.

Q. Well, sir, now I direct your attention to the location of Parkview School, which is the one directly above it, and I will ask you how you can draw a line between those two schools, or how you could district Washington-Douglas without it being a predominantly negro school? A. I don't pretend to try to make something predominantly one thing or the other. I think you draw zone lines according to certain procedures. You take the distance factor, for example, and you give a great deal of consideration to this street

here, but when you get over to this point, then you suddenly avoid it, and actually you have children in the Washington-Douglas districts who are very close to Parkview School and are not permitted to attend it. They are zoned out of it. Distance seems to have been no factor. Main thoroughfares have not been consistently adhered to. Thusly, I think that there is some consideration of other factors that are involved here.

Q. Yes, sir, you are right. I will ask you if one of those

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is not capacity of Parkview School? You have to fill the school up and use it, do you not? A. I don't think that has been the policy here either. Some schools are way under capacity and others are not. Parkview School has a capacity, according to the figures, of seven hundred fifty. It has an enrollment of six hundred and two. In other words, you have about one hundred fifty children under capacity. You have not used the capacity of that school.

Q. I direct your attention to Washington-Douglas. What is the capacity there? A. Five hundred twenty-five, and an enrollment of four hundred and two. You have an under capacity of approximately a hundred and twenty-five in round figures.

Q. Isn't that a pretty fair distribution between the schools? A. Not when you have the factor of distance and the factor of main thoroughfares.

Q. Now look at Whitehall. What is the capacity there? A. Three hundred and fifteen, and it has an enrollment of three hundred and six.

Q. So it is about full, isn't it? A. Yes, it is.

Q. And South Jackson is also at capacity? A. Close to

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it—five hundred and twenty-two, and actually the enrollment is five hundred and forty-four—over capacity.

Q. Now, if you move one district boundary, is it not reasonably sure that you are going to have to move others? A. Yes.

Q. You just keep juggling back and forth, wouldn't you? A. Yes, you would.

Q. I believe you have stated earlier that taking the consideration of race out of it, the balance of the districting and school class load and teacher load is pretty good. A. I didn't say in terms of zones or districts. I mentioned class room load and teacher load, and I agree that it is well balanced. In fact, you are in a very fortunate balance in terms of the way you have organized your schools in this respect. I might say this: You are in better shape than most schools nationally.

Q. Let me ask you this: Is that not the end result of any

districting man? A. What?

Q. The balance of schools, the class and the teacher load? A. This is the desired end, but always in terms of other factors that are involved. You could get a balanced load by having someone up here in the northeast section, actually out in the county, come into a school at the other end of the community, if you are just talking about balanced load and leaving out other factors.

Q. Well, we haven't done that here. A. With your county transfers.

Q. The county will go anywhere we send them. A. I know.

Q. Now, let's switch over to the junior high school districts. We have three shown on this map, which is Exhibit 11, indicated by the red tape. They are almost in a line east and west. The district lines between Tigrett and Merry Junior High follow Riverside Drive, the railroad right

The Court: (Interposing) All right. Let him give his opinion on what is wrong with that they are proposing, and if he says that not having the feeder system is part of it, he can testify and we will consider the relevance at the proper time.

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The Witness: I think the importance of any good educational practice in order to set up zoning lines would be, in effect, to some degree, indicative of gerrymandering as such or at least some reason has come in between sound educational practice or actual practice that is being carried out. You have here a section (indicating) which is very wide here and narrow down here in this section, and then widens out in this section, sort of an hour-glass shape type of thing, and it is kind of irregular. I don't know why it couldn't have been extended over here (indicating throughout). There must be some reason for not having done this.

The Court: Well, do you think that would be better to extend it over there in terms of load of schools?

The Witness: I think it would be better if you took a general line and drew it right between these three schools and you would have a general indication of what the division ought to be, because the schools are somewhat equal in capacity, and then

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from that point, then you try to make the deviations which would balance the school system. When we showed the projecturals, if you remember, we showed where negro students reside and where white students reside, and then you can see where the lines

were drawn very consistently between negro and white population, and this is what the lines tend to follow, and I think that on the basis of logic, you would then contend that probably this had something to do with the way the lines had been established.

I think the lines need to be established on a little more objective and logical basis, objective and logical lines.

By Mr. Rice:

Q. Is your main objection to it the race problem?

Mr. Williams: I object to that, if Your Honor please. He hasn't stated any objection. He is testifying as an expert to the best of his ability, and I don't think he is required to answer counsel's questions as to whether he objects to anything.

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The Court: He is testifying about this map and whether it is gerrymandered, and I think the import of Mr. Rice's question is—is your main reason for saying it is gerrymandered the race question.

Mr. Williams: I think he can ask that.

The Court: Well, that's what he meant obviously.

The Witness: Lines in general follow race residence pattern of the community. This is, I think, something that almost anyone who looked at that could state. I took a map of the community with negro and white populations. I projected it up on the wall, and I gave maps to twelve different principals, and I said, "If you were going to gerrymander this district so that negroes would have to attend

negro junior high schools and whites would attend white junior high schools, how would you draw the lines?"

Mr. Rice: I believe he has departed from the question.

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Mr. Williams: No, sir. He is still explaining, and I think he is entitled to explain. Counsel has to take the bitter with the sweet.

The Court: Well, he is getting ready to testify about hearsay, Mr. Williams, and the question as we understand it, and that's what we are trying to get this case bound to—the School Board has proposed something, and we want something concrete from the plaintiffs' side as to what they say is wrong with it and why, and Mr. Rice is asking this witness what he thinks is wrong with it, and the Court wants to know, because we have to do something with this lawsuit. We can't go on forever, and we have some concrete notions about the elementary schools—as, for example, the concrete notion that the western end of Lincoln ought to be carved off and put into Alexander so all of Alexander would be on one side of the railroad, and we have concrete notion with the possibility of the southeast corner of West Jackson, and that's the kind of thing we are interested in. We are not getting very far along this junior high route on the same issues.

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Mr. Williams: May it please the Court, this witness has already—if the Court is looking for con-

crete proposals, he has already concretely proposed how he thinks that it ought to be done.

The Court: Well, if he has, the Court hasn't picked it up, and that is what Mr. Rice, I believe, is asking him.

Mr. Williams: Well, I thought he had on direct examination. Maybe we had getter go over that again, Your Honor.

The Court: All right, sir. Go ahead.

Mr. Rice: I don't even remember the question. That is all.

The Court: All right, Mr. Williams.

Redirect Examination by Mr. Williams:

Q. Mr. Herman, so there may be no question in the Court's mind, I believe you did state on direct examination how you thought the junior high school zoning system might objectively be set up on a reasonable basis, didn't you?

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A. Yes. I gave a tentative kind of organization which might be followed, and I assume that there would be changes in the elementary boundaries and, therefore, after those changes would be made, then you would adopt the feeder system, and I just suggested that as a matter of tentative planning Parkview, Washington-Douglas and Whitehall would go into Jackson. Highland Park, West Jackson and South Jackson into Tigrett, and Alexander and Lincoln into Merry.

Q. And that would put the three school zones on the western side of town in Tigrett, the two schools in the north-central side of town in Merry, and the three schools on the

southwest side of town in West Jackson, which is on the south side of town, is that correct? A. Yes, sir.

Q. Now, did you take into consideration school capacities in proposing that arrangement? A. Yes.

The Court: You say the three schools on the west side of town into Jackson?

Mr. Williams: Southwest, I am sorry, Jackson Junior. My directions are confused. The three

schools on the southeast side of town into Jackson Junior High.

The Court: Let's go over that one more time. What is it you are proposing?

The Witness: This is a tentative proposal. I think the school administration would have to make studies of this and would have to come up with some kind of, you know, enrollment projection and all. In general, I say Parkview and Washington-Douglas and White-Hall would be feed into Jackson. Highland Park, West Jackson and South Jackson into Tigrett and Alexander and Lincoln into Merry.

By Mr. Williams:

Q. Would that envision that the zone lines of those respective elementary schools which feed into the high schools, junior high schools, would be contiguous, would, in effect, encompass and constitute the zone lines of the respective junior high schools? A. Yes, sir.

The Court: You would put all of South Jackson, West Jackson and Highland Park into Tigrett?

The Witness: Yes, sir; assuming that those lines for those elementary school zones would be changed

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somewhat.

The Court: Well, that would require a complete reorganization of the elementary lines, wouldn't it?

The Witness: This would be dependent upon the organization of the elementary lines; that is whatever occurs there would be a pattern for the junior high schools.

By Mr. Williams:

Q. Now, it may very well be that the Court is looking at the total enrollment for these three elementary schools, but the pupils are graduating from these elementary schools and entering junior high schools, that would not constitute the total enrollment that we have down here in the figures that have been furnished? A. You have said an awful lot, what is your exact question?

Q. What I am afraid is—the Court expressed some surprise that you would put those three schools, Highland Park, which has an enrollment of five sixty-two, and West Jackson, which has an enrollment of four hundred and nine, and South Jackson, which has a total enrollment of five forty-four, into the Tigrett Junior High School zone, but, in considering, in figuring the assignments which would

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thereby be made to Tigrett Junior High School in light of school capacity, you figure the projection of the percentage of the total enrollment of these elementary schools which would be graduating and entering junior high school and not the total enrollment, do you not?

Mr. Rice: I believe Mr. Williams is doing the testifying, Your Honor.

The Court: I believe that is a leading question, Mr. Williams.

Mr. Williams: I guess it was, and not a very good leading question, either, I might say, Your Honor. But it is done now, and is the answer stricken from the record?

The Court: He didn't answer the question.

Mr. Williams: Well, maybe I ought to do it this way:

Q. Highland Park has an enrollment of five sixty-two and South Jackson has an enrollment of five forty-four and West Jackson has an enrollment of four hundred and nine. Now, that is roughly about fifteen hundred pupils. The figures that we were furnished show, I believe, Tigrett

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Junior High School has a capacity of seven hundred and twenty-five. Now, is that, based on those school capacity figures, is your proposal that those three schools feed into Tigrett Junior High School reasonable? A. It would fit within reason, but I think there is one thing always that would have to be considered in addition. This should be the general principle which you follow. Then if you do get differences in enrollment that are drastically different where the administration would feel there should be some shift, there should be some shift, but usually on the edges of the boundaries, where you take into consideration again distance factors, for example.

Q. Now, just one or two more questions. Mr. Herman, do you have any control over the extension or the contraction of the school zone lines of School Zone 45? A. Yes, I do.

Q. In which you are now living? A. I do.

Q. Is there any way that you could extend those lines at present so as to encompass some additional negro students in your school districts so far as you are aware? A. No,

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there is no way of doing that.

Q. Is this a school district, a local school district operated by the state or by a municipal system? A. It is operated by the state, but a local school district is a quasi municipal corporation and operates as such.

Q. Is this district located in a predominantly white community? A. Yes.

Q. Is it contiguous to other local school districts? A. Yes.

Q. So that in order to extend your school district lines you would have to negotiate some change in zone lines, in lines of other adjoining school districts? A. This is not negotiated. This is a matter of state law, and the procedures for doing this are referendum procedures. There actually is in process at the present time a program raised by citizens and ourselves calling for putting a number of our school systems together in consolidation movements, but that is a long-term problem with which we are not directly concerned today and are concerned more with five to ten years from now.

Q. You are dealing in every way that you can on a

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sound educational basis and without racial discrimination with all negro children who are presently in your school system, is that correct? A. That is correct.

Q. And at such time in the future as you do acquire a larger number of negro students, do you intend—how long do you expect to take before you desegregate those chil-

dren? A. They will be desegregated the moment they move into the community. There will be no such practice operating. If they move into a school area, or school zone, they will attend that zone unless there is something unusual, and in that case the children would not be changed individually, but would be changed selectively. Whenever we have a real probem of this type, we usually take a whole class room as it is already constituted and move it into another building, or we may shift the boundaries of a school area right on the edges.

Q. Why is it sound educational practice to require children to attend the school to which they are assigned? A. First of all, there is a neighborhood identity which these children have. They have identification with children in

the neighborhood and with the community, and in communities the school is the main focal of interest and is the center of people's operations. The school is used for virtually every purpose that the community can use it for, for recreational purposes, for holding community meetings, and even other groups which are not community oriented. The school is the center of operation, and the children need to have some identification with whatever that localized community is.

Mr. Williams: That is all.

Mr. Rice: No further questions.

The Court: You say up in your school district, No. 45, you are anticipating substantial number of negroes will move in within the next five years, and you are making special plans with respect to your schools. What special plans would be necessary?

The Witness: Well, we have worked with the local Human Relations Council to make sure there would be—we would support the idea, for example, by policy of Board, that there will be no segregation in relation to housing in the community.

The Court: That has nothing to do with schools.

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What particular plans do you, as an educator, have to make to anticipate the influx of your new negro citizens in the community?

The Witness: One of the things we are doing is planning on employing negro school teachers. At present we do not have any, and the Board and ourselves are fully aware of the fact that this exists, and we are presently planning to hire a number of negro school teachers over the next five years, even though we do not have a negro population. This, in essence, will be one part of the preparation for this. We have adopted the use of ethnic materials in the school curriculum.

The Court: What would that be?

The Witness: These are maerials—well, we had what has been branded in quotation marks as lilly white school materials. There has not only been the race element that has been involved, but the element of social class has been involved. All of our reading materials, for example, the usual thing you read about in the newspapers and periodicals where we

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have Dick and Jane, nice little clean white and negro children, and we don't show negroes in our material, and we are now making an effort to bring in a great deal of material in which children from all races are

included, not only in the pictures, but in the content and the actual program of the school, program of study in the school. We have had our Board of Education reading on problems in relation to segregation and problems which would emerge in a school system, and we are trying to plan ahead of time for any kind of crisis which we might have, and we could very well—in fact, we could have more of a problem than Jackson would have in this respect, because negroes in the community are, in some cases, almost a frightening thing to some people, and we have to plan for this as well. The School District, when this occurs, will take into consideration the education of the community as well. As yet, we have not set up a plan.

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The Court: In other words, you are doing some missionary work right now?

The Witness: Yes, sir. Because we know the problem will be with us too. In our zoning there will be no consideration whatsoever of race, because the zone lines are fairly well established and will remain that way, except for distances in enrollment.

The Court: So far as zone lines are concerned, you wouldn't have any problem, because your negroes would not live in any particular section, would they?

The Witness: No, they would not. They would be over the entire community.

The Court: Anything further?

Mr. Williams: One thing omitted, Your Honor. Mr. Herman has a plane leaving at one something, and I would like, if the Court permits and counsel has no objection, I would like to introduce this evi-

dence regarding the payments which have been made for his expenses.

The Court: Any objection, Mr. Rice?

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Mr. Rice: Go ahead.

By Mr. Williams:

Q. Does that statement correctly reflect the payments which have been made to you, or to Dr. Bardwell for the two of you for expenses, traveling expenses and expenses

of materials in connection with the preparation of the exhibits which have been presented here? A. The expenses where my name is involved are correct. I don't know firsthand about the others. I think they would be essentially correct, because Dr. Bardwell had the credit card on the airplane, and he received the payment for those.

Q. Did you travel with him on each occasion that he came down? A. Yes, except this time. I have the last two times that I have made trips, and this time a total of about, I should say, a hundred and thirty-five or a hundred and forty dollars expenses, which have not been submitted.

Q. In addition to those listed on there? A. Yes.

Mr. Williams: I would like to introduce that as an exhibit.

The Court: So admitted.

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(The document above referred to was marked Exhibit 23 to the testimony of the witness, and same will be found among the exhibits hereto.)

By Mr. Williams:

Q. Now, is that the original copy of a letter which you addressed to me dated the 15th of June, 1965, billing me for your services in this case? A. Yes, that is.

Mr. Williams: Will you let that be introduced as an exhibit to your testimony?

The Witness: All right.

(The document above referred to was marked Exhibit 24 to the testimony of the witness, and same will be found among the exhibits hereto.)

Mr. Williams: Now, if Your Honor please, upon receiving that bill from him, since Dr. Bardwell wasn't coming today, I called Dr. Bardwell yesterday, and he sent me this telegram about which this witness knows nothing, but if counsel has no objection, I would like to introduce this telegram as the next

exhibit.

The Court: All right.

Mr. Williams: A telegram received by me from Dr. Bardwell.

Mr. Rice: I don't have any objection to it being introduced for whatever it is worth. I don't think it is material.

Mr. Williams: I understand he is going to contend that this should not be allowed.

The Court: He is not objecting to the hearsay element in it, as we understand.

Mr. Rice: No, sir, I am not objecting to that.

The Court: All right. Mark it and admit it in evidence.

(The document above referred to was marked Exhibit 25, and same will be found among the exhibits hereto.)

Mr. Williams: I believe that is all.

Mr. Rice: I would like to talk to this gentleman about his fees.

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Recross Examination by Mr. Rice:

Q. Now, Mr. Herman, the fees which you have listed here. I don't question any of that. I just simply want to know by whom you were paid. A. I haven't been paid any fees. I have merely submitted the bill to Mr. Williams.

Q. This has not been paid? A. No.

Q. Have you been paid for your travel? A. Mr. Williams has paid those.

Q. With a personal check? A. With a check directly from him, yes.

Q. Now, do you know from where he got his money? A. No, I don't.

Q. Do you not understand that you are employed by the National Association for the Advancement of Colored People? A. I don't know whether I am or not, to tell you the truth. I know Mr. Williams is associated with the NAACP, but I don't know where the money came from at all.

Q. And Dr. Bardwell testified, I believe you heard him, that he had been contacted by the Legal Aid Group of the NAACP. A. Yes.

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Q. And he, in turn, contacted you? A. He contacted me, not in reference to taking part in this, but he understood I was coming by plane and made arrangements to meet me.

Q. But, the initial contact with you came from Dr. Bardwell about coming down here? A. No—on the basis of he was coming, and he heard that I was coming.

Q. You were coming together, that's what I mean. A. Yes.

Q. You don't know where these funds came from, or whether they were paid by Mr. Williams out of his personal account or relayed by him out of some other account? A. They were not a personal account. In the signature on the check there was an additional element underneath, and to tell you the truth, I didn't read it. In fact, he is not too good a handwriter, if he doesn't mind my saying so.

Q. Some type of special account? A. I suppose so.

Mr. Rice: Thank you.

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Mr. Williams: I neglected to ask you this: Will you look at that first exhibit, if you have it there, and tell us how many trips you have made and where, in connection with this matter, and the time you spent?

The Court: Do we have any issue as to the reasonableness of the amount charged by the witness? We know you are not conceding, Mr. Rice.

Mr. Rice: No question about the reasonableness.

The Court: Does that finish with this witness?

Mr. Williams: Yes, sir.

The Court: All right, Mr. Herman, you may step down, and you are excused.

(Witness excused.)

The Court: We will have a recess. Gentlemen, be back in about fifteen minutes.

(Recess.)

* * * * *

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The trial of the case was resumed after recess on the morning of this date; Friday, June 18th, 1965, at 11:15 a. m., when and where evidence was introduced and proceedings had as follows:

The Court: Mr. Williams, put on your next witness.

Mr. Williams: May it please the Court, that concludes the plaintiffs' proof on the issue of gerrymandering.

The Court: Do we have any additional proof from the defendants on that issue?

Mr. Rice: No, sir.

The Court: What about the question of acceleration of desegregation? As I understand, it is the contention of the plaintiffs that beginning with the coming school year, 1965-66, that all remaining grades should be integrated. As I understand it, on the plan that was heretofore approved in September, it would be the seventh and eighth grades, right, and then the following year would be the ninth and tenth, and the next year would be the eleventh and twelfth? Do

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you gentlemen have any further proof on that issue?

Mr. Rice: No, sir. We rely on the rather extensive hearing we had on that question.

The Court: You mean the pre-trial conference primarily?

Mr. Rice: Well, we rely upon the initial hearing in the matter, in which we submitted the factors that we feel are prepared, and we will only say this to the Court—that the testimony in that hearing was

that we are now reaching that point, and about the only thing we rely on is the initial testimony.

The Court: You have no further proof on that issue?

Mr. Rice: I don't know how we could improve on it.

Mr. Williams: May it please the Court, we submit the burden is on them.

The Court: We will take all this up in argument. Do you have any further proof directly aimed at that issue?

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Mr. Williams: Yes, sir, if Your Honor please, I issued a subpoena. It was issued rather late, I will admit, for Mr. Huckaba to appear today and bring with him—

The Court: Do you want to put him on the stand?

Mr. Williams: I would like to receive that information, at least that was requested in the subpoena, if he has been able to get it up.

Mr. Rice: The subpoena was three-pointed. We are able to supply point one. The other two we don't have, haven't been able to dig out, and I believe this is what you asked for in point one. (Mr. Rice hands document to Mr. Williams.)

Mr. Williams: Is this a single copy, or more than one copy that has just been handed to me?

Mr. Rice: I don't know. We may have more than one copy.

Mr. Williams: I believe it is just a single copy. If the Court please, I would like to ask that this be introduced as an exhibit on this question.

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The Court: What is it in general?

Colloquy

Mr. Williams: It is the figures from the Superintendent showing the total enrollment, negro and white, at each respective school in the school system for the school years 1963, 1964 and 1965.

You didn't furnish it for '63 and '64.

Mr. Rice: No. We don't have that. I might point out that it only called for '64-'65.

Mr. Williams: I am sorry.

We would also like to have information as to the negro and white teachers employed. I don't believe that is a factor since the defendants admit that all-negro teachers are assigned to all-negro schools and all-white to all-white schools.

Mr. Rice: Well, we have white teachers assigned to the integrated schools.

Mr. Williams: Now, the last thing we asked for was figures by the Superintendent as to the approximate number of negro and white students who would be registered in each school if the school system were desegregated in its entirety in September, 1965.

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Since they have not furnished that information, I take it that defendants are saying that they do not have that information and have not considered it. If so, then it will not be necessary for me to put Mr. Huckaba on for any purpose at this time.

The Court: All right, sir.

Mr. Rice: His assumption that we don't have it is correct. The rest of his assumption, we are not sure about.

Mr. Williams: Well, I don't see how they could consider it, if they don't have it.

Mr. Rice: Well, I agree we haven't got that and haven't considered it.

Mr. Williams: Well, we would like to mark that as an exhibit.

The Court: All right, mark it and submit it in evidence.

(The document above referred to was marked Exhibit 26, and same will be found among the exhibits hereto.)

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The Court: Now, what other proof do you have on any other issue, Mr. Williams?

Mr. Williams: May it please the Court, we have Dr. Weinstein, who will testify on the issue of acceleration and faculty desegregation. But, by going forward, we do not wish to be understood as waiving the burden of proof that we submit that the defendants have on these questions.

The Court: You say the defendants have the burden of proof not only with respect to the acceleration issue, but also with respect to faculty desegregation.

Mr. Williams: Yes. If the Court please, this, as being a part of the rights which the students have, the plaintiff school children have as we contend it should. Then the burden is still encumbered on the defendants to justify the delay in accordance with that right.

The Court: All right. We understand your position. Now, Dr. Weinstein is going to testify next?

Mr. Williams: Yes, sir.

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Mr. Rice: If the Court please, I understand the position of the plaintiffs is that it is our obligation to go forward with the proof in this matter?

Mr. Williams: Yes.

Mr. Rice: We move for a judgment on the pleadings, Your Honor, and I object to any further testimony.

The Court: Well, we haven't made up our mind about where the burden of proof is on this faculty desegregation proposition. We understand Mr. Williams' position, which is that as a procedural matter, these plaintiffs have a right to seek faculty desegregation as part of their right to a desegregated education, and since, generally speaking, the burden of proof is on the School Board with respect to gradual desegregation and that type of thing, he is saying that that principle of the burden of proof goes over to the question of faculty desegregation. That's your position?

Mr. Williams: Yes, sir.

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The Court: So he is contending that the burden of proof is on the School Board to show that it is not necessary to integrate the faculties in order to abolish educational desegregation, educational dissemination. In any event, do you have any proof aimed at that particular issue that you haven't put on?

Mr. Rice: No, sir.

The Court: Well, you go right ahead, Mr. Williams.

Mr. Williams: May it please the Court, I might state in passing that I cite as authority for that position an analogous situation on the question of zoning in the Northcross case where it was said that the

Board has the burden of showing that it was non-racial.

The Court: All right.

Mr. Williams: Call Dr. Weinstein.

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DR. EUGENE WEINSTEIN, the said witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Williams:

Q. State your name, age and address. A. Eugene Weinstein, age thirty-four, 6617 Elmwood Court, Nashville, Tennessee.

Q. What is your occupation? A. I am a sociologist. I am employed by Vanderbilt University.

Q. Is that in Nashville, Tennessee? A. That is in Nashville, Tennessee.

Q. How long have you been so employed? A. Since 1958.

Q. Will you state, if you please, your educational and professional background? A. I received my BA from the University of Chicago in 1950; my MA from Indiana in 1951; my Ph.D. from Northwestern University in 1954. Since that time, I have been engaged in research and teaching in the areas of sociology and particularly within the

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areas of sociology and child development. I have been the author of a number of articles in professional journals, two books in the area of child development. I have sat on the editorial board of two professional journals, one in child development and one in social psychology.

Q. Do you have membership in any professional soci-

eties? A. Yes; the American Sociological Association, the Society for Research in Child Development.

Q. Are you presently, in addition to your teaching duties, engaged in research, looking towards learned publications? A. Yes.

Q. Have you been especially interested in the area of child development? A. Yes, sir. This has been a major research and teaching interest of mine.

Q. Have you also interested yourself from time to time in the past in studies related to school desegregation and the development and educational attitudes of negro children and their parents? A. Yes, I have. I have conducted several studies. Students under my supervision have done

doctoral dissertations in this area. At present I am serving as a consultant to a major nationwide study commissioned by Congress as part of the Civil Rights Act in conjunction with the Office of Education.

Q. In particular, did you do any early studies in the City of—well, did you do an early study in the City of Nashville relating to the attitudes of negro parents in school desegregation? A. Yes, I did.

Q. Did you do any other studies in Tennessee? A. Yes. I did another study in another major city in Tennessee.

Q. Doctor, do you feel, then, that you are able to give an expert opinion regarding the effect of faculty desegregation on the desegregation of school children in a school system? A. Yes.

Q. Will you state what that opinion is? A. If I might qualify first, at this time there is not a large body of specific studies that are directed at scientific proof of the direct impact of faculty desegregation, so I will be testifying principally on the basis of my experience in doing research and

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the available literature, and then general principles of child development and social psychology with respect to this particular point.

Generally speaking, then, faculty desegregation would have the—or the absence of faculty desegregation would tend to have the following, would be likely to have the following effect: First, especially in conjunction with a transfer plan, it tends to continue to stigmatize negro schools or schools that were formerly negro schools as negro, and to make schools which were newly desegregated still be regarded as white schools as part of the generalized conception of the schools themselves. As such, it tends to impede the ordinary rate of desegregation in that community.

It would be likely to do this.

There is a second potential impact of faculty segregation with respect to negro students. It deprives them of the opportunity of having experience with white middle class values, with white people in a presumably supportive relationship to them in the educational system. It tends to remove from them the opportunity to have experience with another sub-culture that they have to cope with later in

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life, whose values and attitudes will be very important in the place they make for themselves in subsequent life.

The Court: Are you talking now about the effect of negro children going to a school with an all-white faculty, or are you talking now about the effect of their not going to the school, about their refusal to go to the school because it has an all-white faculty?

The Witness: I am talking about negro students going to a school because of residential factors which

has an all-negro faculty, in which they find themselves in the same culture with people who tend to share the same culture and in which they don't have the experience in the, quote, negro school.

The Court: What you are talking about is the effect of negro children living in a negro neighborhood going to an all-negro school, including the faculty?

The Witness: That's correct, sir.

By Mr. Williams:

Q. Will you continue, please, or had you completed your

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answer regarding faculty desegregation? A. No. There is one other point I think that can be made in this area, and that is the impact on white children of the absence of faculty desegregation. What it does is essentially deprive white children of the opportunity to have experience with negroes in a professional and authoritative role. The existence of a non-desegregated faculty, the existence of an all-white faculty tends to be confirming, likely to be confirming of existing impressions in stereotypes that the white students have, so that this would be another very likely impact of the absence of faculty desegregation.

Q. Based on these principles that you have discussed, would it be your opinion that in order to provide a completely desegregated education for school children, that faculties should be desegregated as well as school buildings? A. Yes. Particularly, if you put the question desegregated education, certainly what students learn in contact from and with teachers as models for them, I would certainly state that it is necessary to have faculty desegregation as well as student desegregation.

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Q. Are you familiar with the guidelines that the Commissioner of Education has published? I don't believe I have but one copy of this.

Mr. Rice: Well, I desire to object to this as being immaterial. We are dealing here with a constitutional question and not an administrative decision.

Mr. Williams: If the Court please, my argument will be, and it is in the trial memorandum which I have filed with the Court, that it is absolutely true that the Commissioner of Education cannot determine for this Court what the Constitution requires. However, the determination, the administrative determination of the highest public education official in the United States regarding what constitutes desegregation in his application of an Act of Congress involving similar rights can certainly be regarded as persuasive.

The Court: Would it be any more from the point of view of Rules of Evidence in the text books written by a very eminent person?

Mr. Williams: No, sir, I wouldn't say it would be any more conclusive.

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The Court: You can't, as a matter of Rules of Evidence, and I suppose we still follow the Rules of Evidence even in this type of case, you cannot introduce a text book on a subject, because it is hearsay testimony and not subject to cross-examination. You can use a text book to cross-examine a witness, to test his knowledge, and a witness can base his opinions on text books he has read, because all opinion evi-

dence necessarily has that element of hearsay, but we know of no rule where you can simply introduce in evidence the opinion of someone else on direct examination of a witness as part of your case in chief, and we can't quite see how analytically what the United States Commissioner of Education has said would be any different in that respect.

Mr. Williams: Well, if the Court please, I think it probably—now that Your Honor mentions it—I think an administrative regulation by a public official of the United States is certainly entitled to a little more considertaion in this Court than a text book.

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The Court: Well, if we were determining a question under the Civil Rights Act, you would certainly be correct because an administrative determination pursuant to an Act of Congress is very strong authority, very strong presumption of its correctness, but what we are doing here, as we understand it, under the suit that is pending, is to litigate constitutional rights, and it would be our idea that what the Commissioner of Education says about a proper interpretation of the Civil Rights Act would not be admissible.

Incidentally, I have a copy of that document you have. It has been generally distributed around.

Mr. Williams: The Court, if the Court please, has in these cases always and invariably, and I suppose I have just gotten into an unloyal-like attitude by reason of the wide discretion practically all of the judges, including Your Honor, I must respectfully submit, have exercised in permitting Boards of Edu-

cation to introduce all kinds of hearsay evidence into the record, practically anything that has any relation to the subject.

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The Court: Well, we have tried to follow the Rules of Evidence, Mr. Williams. Now, it is certainly true that in situations things have come in which did not meet the Rules of Evidence, because there was no objection to them. You and Mr. Rice have actually sort of horse-traded a little bit sometimes, and he wouldn't object to yours and you wouldn't object to his, and it came in. But when you have an objection on a question of evidence, then the only thing the Court can do is apply the law as best he can, and Mr. Rice has objected to this particular document, and we have thought out loud about it and analyzed the problem, and we think we are right about it, and so we sustain the objection.

Mr. Williams: Very well, Your Honor.

By Mr. Williams:

Q. Now, Dr. Weinstein, I forgot to mention this in connection with your qualifications: Are you also familiar with the literature, with research and the publications in general that have been done regarding and reflecting on the pace of desegregation in school systems? A. Well, I have been en-

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gaged in some, and some of my research has some bearing on this particular issue. Two studies in particular have some inferential bearing on this issue.

Q. Do you have any opinion regarding the impact then of delay in desegregation on school children?

Mr. Rice: May it please the Court, I think that this is hearsay. His qualifications on that subject are sketchy, and I really believe that it is the Court's opinion and not this witness' opinion that will determine that matter.

The Court: Well, of course, you are right, Mr. Rice, that the Court has to make the ultimate decision about the issue, but we think that the witness is qualified to give an opinion as to the effect of the delay of desegregation. He has testified that he has made some studies of that. The objection is overruled. Go ahead.

By Mr. Williams:

Q. Will you proceed? A. Well, principally, what happens with segregated education is that negro students start

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out somewhat below white students in first grade, in achievement level, and a whole host of what you may think of as educational output variables, and for each succeeding year the discrepancy widens.

Q. Is that in segregated systems? A. In a segregated system the gap continues to widen with each succeeding year in the system, or in the system that I studied personally.

Q. You say the gap widens. Who is ahead and who is behind? A. The white students get further ahead. Actually, what happens is mainly the negro students fall further behind.

The second set of studies—now, I didn't conduct these—that have bearing on this, the studies reflecting the achievement test results after desegregation of formerly segregated school systems, and here we find evidence that indi-

cates that some of this gap is ameliorated, is reduced subsequent to desegregation of educational systems. Now, taking these two pieces of evidence together, the inference I draw here—I am basing my opinion on acceleration—is that as far as the negro student is concerned, the faster, the

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better; that is every year a negro student—for every year that he is delayed, this is evidence that he is likely to drop further behind. For those students who never catch up with the system, they will drop further behind. So this is the principal basis on which I draw this inference.

Q. Now, is there any evidence—is there evidence that under the desegregated system that there is any significant retrogression or falling behind on the part of the white student? A. No, there is not; none that I know of. I think that the study that I am currently associated with should provide once and for all the most firm and definitive answers to these questions. A year from now I could be more expert even than I am now. However, what we have now indicates fairly clearly what I have been saying.

Q. Based on those opinions and the studies, in your opinion is it important that the Jackson City School System accelerate its pace of desegregation? A. I have addressed my comments to the general principle of what happens as a consequence of continued or slow desegregation. These would apply to the best of my knowledge to any situation.

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Q. You have heard about the Jackson plan that has been discussed here with regard to the pace of desegregation? A. Yes.

Q. Now, will you relate those principles that I have stated to the question that we have raised here regarding

acceleration of the Jackson plan, which now has three years to go before completion of desegregation?

The Court: Not three years, but three steps.
Mr. Williams: Three steps and two years.
The Court: About two years and three months.
Mr. Williams: Yes, sir.
The Witness: I don't know the exact numbers that would be affected in terms of the negro students, but it would be two and a half years of decreased education or less educational opportunity and likely further falling behind.

By Mr. Williams:

Q. For the negro students? A. For the negro students of Jackson, Tennessee.

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Q. Assuming that the negro students constitute approximately forty percent of the school population of the City of Jackson, would you assume that this would be a substantial educational loss to negro school children in the City of Jackson? A. Yes. But, not only based on the forty percent—it is apt to affect, because of the pattern of zoning, a somewhat smaller number than forty percent, but it would still affect substantial numbers. If it affects ten or fifteen children, it is still a loss.

Q. Now, on the question of faculty desegregation, you mentioned just a sort of an aside in connection with the stigmatizing of schools, the matter of free transfers, would you state, if you please, your opinion with regard to whether or not allowance of free transfers has any impact on either of these questions?

Mr. Rice: I object to that as being outside the scope of this inquiry at this time.

The Court: We didn't quite understand the question.

Mr. Williams: I asked his opinion on whether or not the allowance of transfers has any impact, any

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significant impact on either of these questions, that is faculty desegregation or acceleration. We are talking about these two issues that we have before us now, if Your Honor please, but I am trying to bring out—you mentioned the impact of transfers at least in connection with his conclusions regarding faculty desegregation, and I wanted him to explain that.

The Court: Well, the Court has indicated a tentative ruling about the business of transfers and how it has to be operated, if it is going to be constitutional. But, as we understand, you are asking this question for another purpose. It is tied in with this question of faculty desegregation.

Mr. Williams: Yes, sir.

The Court: And we are not quite sure how it would be, but maybe the witness will explain that; so I will overrule the objection.

The Witness: What I meant there essentially was that when you have a pattern of faculty segregation

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coupled with a transfer provision of the kind involved in this particular instance and what has been the present experience is the continuation of negro schools identified as negro schools, and the continuation of the other schools tending to be identified as white schools, although partially desegregated. So

that what this does—faculty segregation tends to make additional impetus to transfer out of a negro school, because it is obvious that it is negro in all of its educational environs and it tends to stigmatize a school as a negro school.

By Mr. Williams:

Q. Does it also have any effect in regard to the negro child, who might otherwise attend, exercise a free choice or zoning rights to attend a white school? A. I am not as sure on that point, Mr. Williams. The experience from my research has indicated that negroes who are interested in desegregated education for their children have wanted their children to have experience with white teachers, have specifically stated that this was one of the reasons that they

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were interested in desegregation. They wanted this kind of experience for their children.

Q. Is there anything in your studies to indicate that these parents did not want their children to have a broad ethnic exposure with regard to faculty? A. No. But they did want their children to have experience with some white teachers.

Q. Dr. Weinstein, you, too, I believe, have incurred travel expense in coming down here, have you not? A. That's correct.

Q. This is your second day? A. Yes.

Q. I don't believe I have paid you anything? A. Not yet, sir.

Q. What is the amount of that travel expense? A. About $68.00.

Q. For both days, or just the one day? A. For both days.

Q. And I believe that when I had my secretary to call you and ask you if you would testify for us—did she mention to you that we would expect to receive a bill from

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you? A. She indicated to me that that would be involved.

Q. And what would be the amount of that fee? A. A hundred dollars is generally the amount.

Mr. Williams: That is all.

Cross-Examination by Mr. Rice:

Q. Dr. Weinstein, have you ever personally talked with any of the plaintiffs in this lawsuit? A. I have not.

Q. Have you personally talked with any parent or child in the City of Jackson in regard to the school system? A. I have not.

Q. So that we will at least be talking about the same thing, what is your, and I am sure the accepted definition of sociology? A. It is the scientific study of human society.

Q. Well, when you combine it to make it social psychology, what do you mean by that? A. Sociology is concerned primarily with how groups are organized with social structure. You might think of sociology as the study of the forest as contrasted with social psychology, which is concerned with the location of the individual, with rela-

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tionship of the individual as an individual in society, to his developments, to his personality, and how this is related to and conditioned by society.

Q. You say scientific study. Now, just what do you mean by scientific study in regard to the study of humanity? A.

With regard to the study of human behavior. Well, we don't wear white laboratory jackets or that sort of thing, but we attempt to get quantitative, objective evidence to test hypotheses under conditions in which the answers could either verify or disconfirm what one's present functions were. In other words, we attempt to use the scientific method which means observations, measurement and verification based on empirical evidence. We go out and look, go out and observe.

Q. That is exactly what I wanted. You just go and look, don't you? A. Yes.

Q. And at the very best, sociology and social psychology is a nebulous sort of thing, isn't it? A. Relatively speaking, yes.

Q. Now, in regard to the studies relating to school segregation, have you made those yourself? A. Two of them —the actual data collection was done by a doctoral student of mine. Well, in both I didn't actually collect the data. In one case the data was collected in the school system itself, and in the other case, it was collected by hired interviewers, but I supervised, designed and conducted the analysis of these studies.

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Q. What kind of questions would you ask on a school segregation study? A. It depends upon what the particular area or issue was involved. In one study there were achievement tests given, IQ tests given. There were questions like, "Do you want to go on to college? Are you planning to go? What job would you like to have when you get older?", trying to tap such things as educational, occupational aspirations—"What groups do you belong to?", trying to tap areas of social participation. It depends on what the specific purpose of a study is.

Q. What was the specific purpose of these studies upon which you are relying here? A. There are two. One study had as its purpose the factors which entered into negro

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parents' decisions regarding desegregation of their children. The second study was a study which was attempted to compare negro and white elementary and junior high and high school students in terms of what we were calling social readiness for desegregation and for mobility in society actually. We were trying to get a base point to determine what were the gaps, what were the areas of social competence or gaps in social competence, things like aspirations, plans, the capacity to plan, conceptions about the future, the ability to take the future into account.

Q. Well, if I understood you correctly, in language that I can handle a little bit better, one study had to do with the reasons that negro parents desired to have their children attend a desegregated or achieve a desegregated education? A. That's right; and reported also on the experiences of negro parents who had sent their children to desegregated schools.

Q. And, second, you more or less compared negro and white students, putting it succinctly? A. That's right.

Q. Now, with regard to the second one, did you find a

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difference? A. Yes. I pointed out to Mr. Williams before —yes, there are differences and the differences increase with time.

Q. The differences in social background, social achievement and educational achievement, as shown by achievement tests, is that not true? A. That's right. We try to make social background studies to see whether the differences continued.

Q. But you agree, however, that there are those differences present? A. Between negro and white students?

Q. Yes. A. Oh, yes.

Q. Now, I will ask you, Dr. Weinstein— A. (Interrupting) I should clarify. I am sorry to interrupt—that this study was done in a segregated system.

Q. I am glad it was. Now, if you take those two masses and mix them into an integrated school and classes on an even level, if you have a fourth-grade colored and fourth-grade white, and you bring them all into the same common

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grade, I will ask you if it is not true that the resulting mixture of the two different levels of educational achievement into one group, is it not a reasonable statement that that causes myriad administrative problems to the educational system? A. I can only report on what I know of the experiences of school systems who have had top to bottom desegregation. Actually, I hesitate, even, to do that, because what you are asking me is to comment as an expert on educational administration, and I am not an expert on this.

Q. Then you are not competent to say to the Court whether the faculty segregation or the acceleration was related to administrative problems at all? A. No. My testimony was not related to administrative problems, but to the impact on the child.

Q. All right. Thank you, sir. Now, we will move to something else.

Have you testified in this type case before, Dr. Weinstein? A. Yes, I have.

Q. Where? A. In Federal Court in Nashville, Tennes-

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see, on two occasions, one with respect to the desegregation

of the Davidson County Schools and once in relation to the desegregation of Wilson County Schools and also in Chattanooga.

Q. Now, in this case, and in those cases, by whom were you employed? A. Mr. Williams.

Q. And by whom were you paid? A. Mr. Williams. In the Chattanooga case and Nashville cases I was not paid.

Q. The time that you were paid, were you paid by personal check of Mr. Williams? A. I don't recall. I believe so. It was from Mr. Williams' office, but I don't recall.

Mr. Williams: Of course, that's immaterial, if Your Honor please. I haven't objected, because I don't care, but I object now. It is irrelevant.

The Court: Well, it might be. We will overrule your objection at this time.

By Mr. Rice:

Q. Do you have any contract with any of these plaintiffs to pay you for your services? A. Contract with any of the plaintiffs?

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Q. Yes. A. No, sir.

Q. Have you had any agreement or dealings at all with the plaintiffs themselves? A. The plaintiffs per se, no, sir.

Q. Now, Dr. Weinstein, in regard to the transfers about which you spoke, do you advocate a no transfer plan? A. I don't advocate any plan, sir. I pointed out simply what appears to be the consequences of this kind of transfer plan.

Q. Well, any transfer plan that permitted transfers would do the same thing, wouldn't it? A. Pardon?

Q. Any transfer plan that allowed a student to transfer back and forth would do the same thing, wouldn't it, have the same effect upon a student? A. As far as the school system is concerned, as far as the racial composition of schools.

Q. I took it that you were testifying from the standpoint of the child alone, were you not? A. That's correct.

Q. And you were not concerned with the school system.

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You were testifying from the point of view of the child alone, is that not true? A. The child and the kind of school environment that the child finds himself in.

Q. So any transfer plan at all that would allow a student to move from one school to another would defeat that portion of your requirement for an education, would it not? A. I don't see how that follows, Mr. Rice.

Q. Well, is it your belief, then, that a child should remain in the school of the district in which he lives, regardless, in order to give that child the best education? A. No, sir, not necessarily.

Q. Now, the presence of a white faculty, for example, in the formerly white schools in Jackson, that alone would have no effect whatever upon the attainment of a desegregated education of the negro children, would it? A. The presence of an all-white faculty?

Q. Yes. A. Yes, it would.

Q. How would that interfere with their attainment of a desegregated education? A. They don't have access to negro teachers as well in the school.

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Q. Is that the basis on which you have based your testimony, that it affects a child adversely, the fact that he

would not be taught partially by negro teachers? A. No, sir.

Q. How does the presence of an all-white faculty in a school deter a negro child from attaining a desegregated education? That's my question to you. A. He is going to a school that is partially, in one respect, segregated.

Q. Is it your interpretation, then, that for schools to be desegregated, that everything in it must be desegregated? Is that your thinking? A. I am searching my mind for exceptions to the word "everything". That covers a lot of material. But, with a reasonable interpretation of "everything", Mr. Rice, yes.

Q. Now, the attainment of association with a culture which you say exists in other schools, would a negro child in a white school not attain that by virtue of being associated with the white and negro children in there with him?

A. Yes, he would, to some degree, certainly.

Q. And if a white child chose to attend a negro school, the presence of the negro student body, would that not associate that child with the opposing culture that you refer to, if there is a difference in that school? A. Certainly. But I guess what accounts for my apparent confusion is both are apt to notice and wonder why it is that only white teachers are allowed to teach the white students, and it's this kind of potential impact that forms a substantial basis for my testimony.

Q. The fact that he would see a white child—I mean see a white teacher, and wonder why there is not a negro teacher there? A. In the whole school.

Mr. Rice: That is all.

Mr. Williams: That is all.

The Court: The Court has a couple of questions to ask you.

Did you testify, Dr. Weinstein, that so far as you know in your own experience, that negro children do not, are not deterred from going to a heretofore white school because it has a white faculty? In other

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words, I know it is your opinion that it would be better from an educational or sociological point of view if these heretofore white schools had negroes on the faculty. I think you say it would be better for both the white children who have always gone there and the negro children who come in. But the more precise question that the Court is trying to ask you and we think you may have answered it on direct examination is this: In your experience, do you find the negro child and parents facing a decision in going into a theretofore white school—is he to any extent deterred from going to that school theretofore white by the fact that the faculty is all white?

The Witness: As with any attitude or opinion, there is going to be variation on this. In one piece of research that I did, some parents commented on that as a problem. Some were not deterred, but actually saw the access to white faculty as a value, although the issue of all-white was not the issue that

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the study was addressed to.

The Court: Do you know of any instance where a negro child or negro parent has decided not to send his child to a school because it had an all-white faculty?

The Witness: Yes, sir.

The Court: In Nashville?

The Witness: Yes. Some of the families in one study had decided to send their children to the desegregated school, and of those who did not, a number cited this as one of the reasons.

The Court: That they didn't have negroes on the faculty?

The Witness: Well, they were afraid that the white teachers would be too hard on the children.

The Court: You mean would be impartially hard on them or in doing their regular teaching they would be too hard?

The Witness: I can't completely interpret the response that I get from a survey. I am not sure what

they had in their minds, but this was raised as an issue, an issue that parents gave for not sending their children to white schools, they wouldn't have any negro teachers, and they were afraid the white teachers would be harder on them.

The Court: As far as you know, they didn't do it because they thought the white teachers would single them out and make it uncomfortable for them by being hard on them?

The Witness: As far as I know.

The Court: Let me ask you this: Back in the first round on this litigation, the City of Jackson School Board introduced proof in support of its contention that it was entitled to a gradual desegregation plan, and the plan that they offered, I believe, was the first three grades, the first three and the second three

grades the next year, and then a grade a year after that. The plan the Court approved was the first three grades the first year and the next three grades the

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second year and then two grades a year after that. So we are down here to the point at the beginning of the school year '65 and '66 where under the plan approved by the Court, they would desegregate the seventh and eighth this fall and then the ninth and tenth a little more than a year from now and the eleventh and twelfth a little more than two years from now. Mr. Williams is seeking to persuade the Court to amend the plan and order desegregation of all the remaining grades this coming fall. That's the position of the plaintiffs.

Now, as I say, when we held the initial round of hearings in connection with this case, the School Board introduced proof which essentially in one respect was more favorable to the negroes than what you have just said. The School Board's proof was that at the inception that their accomplishment level was not noticeably different from the white children, but as they progressed through school, this gap between the white children in the white schools on the one hand and the negro children from the negro

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schools on the other—the white children getting out into front and, as I say, that tendency accentuates as we go along, and so the School Board made the point that in support of its contention for this gradual desegregation, the School Board made the point that if you take a negro child who is already in the

sixth or seventh grade, and that gap has already developed, and put him into the white school, either one of two things must happen—either, (A), he must fall behind if he is put in the same grade because of that gap, or (B), you must put him back some grades and, therefore, he is put in with younger children, which creates problems. So that has been their main contention in support of their gradual desegregation plan.

Now, we understand that you are not testifying here as a professional educator, and you declined to give Mr. Rice an opinion on cross-examination as to the effect of taking a child who has been in the negro school system all along—well, say, he is in the ninth grade or tenth grade this fall, and putting him into the tenth grade in a white school system. We are talking about averages now. Of course, we un-

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derstand there are plenty of negro children in the tenth grade that could very easily do the tenth grade work in the white school, but we all recognize there is this gap on the average, and I might say here that the School Board in the original hearings, did not contend that this gap resulted from any inherent differences in the race, just from a lot of factors that we needn't go into here—but what I am saying is if you take a tenth grade student who has never had any experience in white schools, and put him into the tenth grade in a white school, I am not asking you what the effect on the school would be, because you say you are not an educator, and you are not giving an expert opinion on any administrative prob-

lem that might create, but what would be the effect on the child, in your opinion, if he is put in, either in a grade over his head, or put back two or three years, so that he could take hold and keep up?

The Witness: The evidence we have, if you re-test school systems after desegregation, is that the gap

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tends to narrow. Now, I don't know what happens to the individual child, this individual child or that individual child, but take the whole seventh grade in a formerly segregated system and within three years—now, you have combined negro and white. This is the experience in Washington, D. C., for example—they used to keep separate achievement test results for both the negro schools and the white schools. They desegregated the entire system top to bottom all at once. What happens over about a two to three-year period, the achievement test gap between white and negro students for the system as a whole goes away.

If you add in a low figure, it is going to pull your average down, and if you add in the negro average to the white average, the overall average will be lower, and in about three years averages up to where the white average was three years before, and there is only one place this can come from in this amount, and that is a narrowing of the gap for the negro students.

The Court: Here is what is bothering the Court.

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Remembering we haven't been in school for a long time, but remembering back, for example, if you

were in the tenth grade and they expected you to have had geometry already and know it with a certain degree of proficiency, and so you are going to a school where they expect you to know it a lot more than the school you are in, and they start building on that, on that assumption that you do know that course that well, and you don't know it, I was just wondering what you would do. We are talking about averages. We know there will be a lot of exceptions, and I am not speaking now—I am not asking you about the problems in the school system, because you are not testifying about that, really, but I am just wondering what problems would be created from the point of view of the sociologist and social psychologist where you were faced with that situation?

The Witness: You have some kids who respond to challenge and pull themselves up. You will have some who become somewhat more discouraged than

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they presently are with education. That is, I don't think you could point out any single overall response for all the children who would come in behind and move into a newly desegregated situation after they had been in the ninth or tenth grade. I think you have different kinds of responses. If you ask me my guess as to what the average would be, I guess on the average their performance would get better.

The Court: Well, of course, we assume from what you have said, that being put into that situation will be a factor which will motivate the child to try harder than he has been trying, and I would guess you are certainly right about that. That's just ordinary

human nature, that you would respond by trying to work harder, because they were demanding more of you and your fellow students would be operating at a higher level. But what occurred to the Court was that you might be faced with numerous situations where even though they were now more motivated, it was just beyond them to do that much

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catching up. For example, I attended Central High School in Memphis, which I thought was a pretty good high school, but I suspect if you had taken me after I finished the tenth grade and entered the eleventh grade, taken me to Andover or Groton and put me in the eleventh grade, where I am sure they were doing a much higher level of work than we would have been doing at Central High School, that it might have created a very serious problem for me, and what is bothering the Court is, you might have somewhat the same relation between the negro schools, say, at the tenth grade level at Jackson and the white schools, as we have between Central High School in Memphis and Andover or Gratten. You see what I mean? And that has been a deep concern to the Court.

Of course, we realize that you can't constitutionally deprive these negro children of their right to a non-segregated education, or to put it more accurately, under the law, abolition of discrimination based on race, because in doing so you create problems, but

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the Courts have indicated that in determining how fast you should go, the Court is entitled to consider

these problems. I suppose you would call them administrative problems, and that is what we are trying to find out.

Well, we want to ask you another question. As you know, under the law of Tennessee, a child has to go to school until he is, I believe, sixteen years of age. There is no law requiring anybody to teach school. And another problem has come to our mind, because the plaintiffs, as part of their right to the abolition of discriminatory education, are seeking to effect an integration of the faculties in Jackson, and it is their contention that they cannot have their whole constitutional right as long as these faculties are segregated, and there is a good deal of law to that effect. We won't go into that with you, because you are not concerned with that. But we are wondering has there any study been made anywhere that you know of in this general area under comparable circumstances of what happens when a Court or-

ders a desegregation of faculties. I know that generally when this sort of relief has been sought, the Courts have taken under advisement and not done anything about faculty integration until they saw how the plans for the students were doing, but I wonder if you know of any place where it has been actually tried and ordered by the Court, and what was the reaction of the faculties, both negro and white?

The Witness: Well, Wilson County—there is not a great deal of faculty desegregation, but Wilson County here in Tennessee has some.

The Court: Has Judge Miller entered an order on the Wilson County faculty?

The Witness: I am not sure of the exact legal status. It may have been an order or pre-trial conference, but they more or less volunteered.

Mr. Williams: Yes, he did.

The Court: Do you have any idea what the relative percentages were of negro and white teachers in Wilson County?

The Witness: No, I don't, Your Honor. The other

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example, I think, is when a negro high school burned in Franklin County, there was eight or ten faculty members absorbed in the faculty of the white school, and they let the negro high school go on that.

Mr. Williams: That was Putnam County.

The Witness: The other instance that I can recall —well, Nashville is planning—I don't know what numbers.

The Court: Do you know of any experience in Nashville—have they actually done it in Nashville?

The Witness: No. It is on the planning board, to the best of my knowledge. But, to the best of my knowledge, the places where it has occurred, there has not been the mass exodus of white faculties from the system. As a matter of fact, one of the problems that has come up as a result of faculty desegregation or school desegregation is the loss of jobs by some negro teachers.

The Court: Well, we don't know this judicially. We understand there has been opposition to this

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because of fear of the negro teachers, real or

imaginary, that they might lose their jobs. But I suppose that's not a problem for the Court.

The Witness: I know of no place where the predicted mass exodus has occurred at all. Might I just make one more comment in relation to a very real issue you were raising, Your Honor?

The Court: Yes.

The Witness: What happens to a child who is behind, and it's one of these balance issues, he comes in, let's say the ninth or tenth grade, and the question is, is he going to be so far behind that this situation is going to really lay him low, or is he going to respond to the challenge, or is he going to get something out of it, and there is the balance of these possible negative facts of having to pass up to this much gap against just letting the gap drag out for two and a half years—for that child, what is the better solution? It is a very complex issue.

The Court: As to what is better for him?

The Witness: Yes.

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The Court: And what may be better for one might not be better for the next?

The Witness: No, sir. But in one, he at least has a chance, and the other, he doesn't.

The Court: Anything further from this witness?

Mr. Rice: No, sir.

Mr. Williams: I think you may have covered the only question I was going to ask you, and I just want to ask it anyway.

Dr. Eugene Weinstein—for Plaintiffs—Redirect —Recross

Redirect Examination by Mr. Williams:

Q. Regardless of this question that the Court has raised with regard to the possibility of a negro student who is behind having difficulty, would you say, as a sociologist, that he has had a better chance as a human being if, for example, he was exposed to good geometry with the opportunity to fall behind or get better, fall further behind or get better than if he had ever had the opportunity to be exposed to it? A. I believe that was the import of my comment to His Honor.

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Q. It would be better for him to be exposed and have this opportunity, is that correct? A. Yes, sir.

Mr. Williams: That is all.
The Court: Anything further?
Mr. Rice: One question.

Recross Examination by Mr. Rice:

Q. Dr. Weinstein, is it better for a child to graduate from high school or to drop out? A. That depends.

Mr. Rice: Thank you.

Redirect Examination by Mr. Williams:

Q. What is the effect of a person, of a human being, sociologically, of a human being having an illusion that he has an education that he doesn't have? A. Potential future disappointment.

Dr. Eugene Weinstein—for Plaintiffs—Redirect

Q. Just as much as if he had dropped out in the first place, is that correct? A. In these cases, State Boards of Education and state legislatures, in my judgment, have

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been fairly wise in not requiring that every student complete high school. Some students do not. Some students feel very embittered about school. They would be better off working, but I don't advocate high school drop out as a general principle.

Q. But there is no magic in handing anybody a high school degree or college degree? A. No, there is not.

The Court: I think you would say this, though—if someone graduated who had really done the work, if they could think pretty well, it might help them, mightn't it?

(Laughter)

The Court: Well, thank you very much, and you may step down.

(Witness excused)

The Court: Gentlemen, is there going to be any more proof in this case? We are going to adjourn until 2:00 o'clock.

Mr. Williams: Possibly not.

The Court: Well, if we don't have any proof, we

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will be glad to hear your arguments.

Mr. Rice: I would like to hear whether there is or not, because I could turn loose considerable people. The Court asked about this symphony, and

these people are here, but I don't believe it is really material.

The Court: Well, maybe you had better put them on, because as we understand, Mr. Williams is making some contention about it, and he wanted you to present the people who knew the facts—it being your contention, as we understand at the pre-trial conference, that the School Administration had nothing to do with who the symphony decided to invite, and Mr. Williams asked you to get some proof on that.

Mr. Rice: We have it.

The Court: Other than that, do you have anything else, Mr. Williams?

Mr. Williams: Except for this: We had affidavits attached to our original motion, if Your Honor please, and while I think that Mr. Rice has admitted substantially everything alleged in those affidavits,

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at the same time I don't want to be caught napping, and I am prepared to put two or three of these intervening plaintiffs on and let them testify with regard to these original matters that we alleged regarding what happened last September, 1964.

It is primarily related to the transfer question, if the Court please.

The Court: Well, as we understood it, Mr. Rice conceded that as a general proposition where a negro child ended up in a negro elementary zone and applied to go to a white school outside of his zone, that, in general, he was turned down. I believe there are a couple of situations where you let them do it, where they lived near the border of the white school zone. Isn't that correct, Mr. Rice?

Colloquy

Mr. Rice: In general, we turned down these particular plaintiffs. There is no question about that. I have forgotten how many asked, or how many went.

The Court: Well, these were in the category of

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negro children who lived in a negro elementary school zone under the new unitary system, and they were seeking to go to a school in a white school zone, and they were turned down.

Mr. Rice: These plaintiffs, yes, sir.

The Court: And I think it is also undisputed by you that as a general proposition when a white child lived in a negro school zone, he, as a matter of course, was allowed to transfer out to go to a white school in whose zone he didn't live.

Mr. Rice: That is right.

The Court: All right. We will adjourn now until 2:00 o'clock.

(ADJOURNMENT)

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(AFTERNOON SESSION)

The trial of the case was resumed on this date, June 18th, 1965, at 2:00 o'clock, p. m., when and where evidence was introduced and proceedings had as follows:

The Court: Mr. McTighe, we understand you have a criminal matter that you would like to present at this time.

Mr. McTighe: Yes, sir, if Your Honor please.

(The trial of this case was interrupted for the presentation of a criminal matter at this time.)

The Court: Mr. Rice, I believe that you have additional proof?

Mr. Rice: Yes, sir. The Court will recall that earlier in this proceeding Mr. Albert Porter took the stand and testified on a limited basis and cross-examination was deferred in this matter, and I would like at this time to examine Mr. Porter. He is one of the plaintiffs in this matter.

The Court: All right. We will have Mr. Porter come around.

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ALBERT PORTER, the said witness, having been previously duly sworn, resumed the stand and testified further as follows:

The Court: You understand you are still under oath, Mr. Porter?

The Witness: Yes, sir.

Cross-Examination by Mr. Rice:

Q. Mr. Porter, you testified earlier that you were the Business Manager of Lane College? A. No; the accountant.

Q. Now, I will ask you if you are not also a plaintiff that intervened in this proceeding? A. That's correct.

Q. You have a daughter that I believe lived in the Lincoln district and registered in the Whitehall district? A. Yes, sir.

Q. And your child was subsequently assigned to the Lincoln district in which you live? A. Right.

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Q. Do you hold a position with the National Association for Advancement of Colored People in Jackson? A. Yes. I am the Educational Chairman.

Q. Now, the Educational Chairman—another way of putting that, you are pretty much the strong arm of Dr. Bell as the President? A. Yes, sir.

Mr. Williams: Of course, we object to the relevancy of all this.

The Court: We don't quite know yet whether it is relevant or not. I will overrule the objection at this time.

By Mr. Rice:

Q. You are pretty active in the proceedings of the National Association for Advancement of Colored People in Jackson, aren't you? A. Yes.

Q. I didn't ask that for information, because I already know it, but simply for the record.

Now, Mr. Porter, these plaintiffs that intervened at the same time you did who had their children do the same thing that you did with your child, apply to go from the

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district in which they lived into some adjacent district, were pretty well located and rounded up by you, weren't they?

Mr. Williams: I object to that, if Your Honor please. That is irrelevant.

The Court: What would be the relevancy of their motivation, Mr. Rice?

Mr. Rice: The real plaintiff in this lawsuit is the National Association for the Advancement of Colored People; that is the relevance. These plaintiffs have not paid anybody any attorney fees.

The Court: Let me say this on that question: There is absolutely nothing wrong with the National

Association for Advancement of Colored People procuring counsel for these plaintiffs and bringing this lawsuit. I don't think there is any question about that. Now, we understand it is your contention, however, that these plaintiffs cannot recover any fee resulting from this present round of litigation, for several reasons—one of which is that they haven't actually incurred any contractual liability to any lawyer to pay a fee. Now, if that is what you

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are getting at, we think you are entitled to go into it, but I think it is immaterial, the fact that the NAACP induced these people to seek to get into these schools, and thereafter, to file this lawsuit.

Mr. Rice: The Court is, of course, correct on that phase of it, but there is another phase which I have not yet gotten into that I think is material. Well, I will get to it and see what the Court says when I get to it. But, of course, that is what I am leading up to, Mr. Porter.

Q. As a plaintiff in this lawsuit, have you paid Mr. Williams a fee?

Mr. Williams: That is objected to for the record.

The Court: On what basis?

Mr. Williams: On the basis of whether or not—well, that's all right. I withdraw the objection.

The Court: All right. Go ahead, Mr. Rice.

By Mr. Rice:

Q. Have you paid Mr. Williams a fee? A. I paid what was required at the time.

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Q. At what time? A. At the time that I asked him to come down and counsel with me and with the other plaintiffs in this case, and at that time it was asked what would the financial obligation be, and it was required that each parent at that time would give him a retainer fee, and that was given.

Q. Each parent paid that? A. Each parent paid.

Q. Every parent that is listed on here as an intervening parent, an intervening plaintiff? A. To my knowledge.

Q. And that was how much? A. $5.00.

Q. As to the previous plaintiffs, did they make any payment to Mr. Williams, the original plaintiffs, Brenda Kay Monroe and those people? A. I can't testify to that fact. I can testify that they were requested to do so.

Q. The bulk of it, though, is being furnished by the National Association for the Advancement of Colored People, isn't it, through the Legal Aid Fund? A. That has not come to my knowledge. They have not said to us that they would bear the expenses.

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Q. Have you received any bills from Mr. Jack Greenburg or James M. Neblitt or Derrick A. Bell, Jr., of New York? A. Not at this time.

Q. Who are those people? A. They are officers in the NAACP.

Q. And they haven't billed you for anything or any of these other plaintiffs that you know anything about? A. To my understanding, and I think to the other plaintiffs, the financial obligations would not come before us until the litigation had been completed.

Q. Now, Mr. Williams, I believe, is counsel for the NAACP? A. Yes, he is.

Q. What do you call him, Regional or Area Counsel? A. State.

Q. Is he paid a salary by the NAACP? A. I don't know.

Q. Now, Mr. Porter, I believe that you state in your motion for relief that you did not find out until August the 29th, two days before school started in 1964, that the request for transfers of the various plaintiffs here would

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not be granted. A. Well, it was on Saturday that the letter came in the mail.

Q. And the school started on Monday? A. Right.

Q. And this very lengthy petition here was filed on the 4th day of September, right? A. I don't know what the date was, but it was filed Sunday. We called him to come to see us on Sunday.

Q. Who? A. Mr. Williams.

Q. Now, how did all of you happen to get together so quickly? A. Well, when this came to us, inquiries were made to me, and I thought what we should do was have a meeting and we all met at Lane College. At the same time Dr. Bell was asked to call Mr. Williams, which he did, and Mr. Williams consented to come here and talk with us.

Q. And within that period of time, then, this was prepared and filed? A. It was all done on Sunday, whatever date it was.

Q. After you parents met and were dissatisfied with the action of the Superintendent, did you, or any parent, to

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your knowledge, or any counsel say a word to the City Attorney, to the School Superintendent, to the Commissioner of Education, or to any member of the Board of Commis-

sioners of the City of Jackson in regard to those transfers? A. Well, I didn't. I don't know about the others. I did not.

Q. Did you pretty well supervise the meeting of those parents? A. Well, I called them together, and we were there, and when Mr. Williams came, we told him what we wanted, and if that is supervision, I did.

Q. Did Mr. Williams suggest to you that you appeal this decision to the City Commission?

Mr. Williams: Of course, that is objected to, if Your Honor please. He is now getting into a matter of advice and consultation as between client and attorney, and that is a privileged matter.

The Court: I believe you are right about that.

By Mr. Rice:

Q. Mr. Porter, did you or any parent at this meeting discuss carrying this matter to the Superintendent, or to

the Commissioner of Education or to the Board of Commissioners of the City of Jackson? A. As far as I can recall, I didn't make the suggestion, but I think someone brought up the idea. I believe the word "appeal" wasn't named, but something was said about the procedures in the transfers, but I am not sure exactly what came of this, because my opinion at that point was that it was almost impossible for me to check with the School Board, because when I received the letter at 2:00 o'clock in the mail Saturday, the office of the School Board was closed, and I was to send my child to school Monday morning, 8:00 o'clock the next day, so there was no opportunity for that.

Q. Did you attempt to see them on Monday, Tuesday or Wednesday? A. No.

Mr. Williams: Of course, I object to this on the ground of relevancy in view of the admissions in the defendants' replication and the fact that the Court—

The Court: (Interposing) We don't think that their failure to seek that appeal would have any

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significance on the constitutional issue we have before us, but it might have some significance on the claim for attorney fees; so on that basis, we think it is admissible.

By Mr. Rice:

Q. What I am asking you is—did you make any effort at all to secure a ruling, either from me as City Attorney, or from Mr. Langford, the Commissioner, or any member of the Board of Commissioners? A. I didn't, no.

Q. Now, Mr. Porter, there has been three proceedings filed in this matter, one immediately following the 1964 decision of the Court right after the schools began. There was appeal filed there, and motion for further relief, and then in September of last year, and again, I think, in October or maybe November of last year, there were petitions for further relief filed before this Court. Since the order was handed down on August 20th, 1964, by this Court, have you, or any parent associated with this lawsuit, made any effort whatever to carry a grievance or to seek redress from the Board of Commissioners of the City of Jackson? A. Well, I haven't, and I was under the opinion that you

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were to carry—I am using that, because you are speaking in terms of the School Board—you were to carry out the orders of the Court, and if you did not, I was under the

impression that we were to come back to the Court for this relief.

Mr. Rice: I believe that is all.

Redirect Examination by Mr. Williams:

Q. Mr. Porter, I believe you were residing in Jackson at the time this lawsuit was originally brought, were you not? A. Right.

Q. And was your child a member of the school system at that time, a student in the school system at that time, when the suit was originally brought in January of, I believe, 1963? A. No, she wasn't in the school system. She had not reached school age.

Q. When did she first enroll? A. In September of this past year.

Q. September of 1964? A. Right.

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Q. Now, were the other parents that went along with you when you attempted to register your child in school in September, 196— A. They didn't necessarily go with me. They went individually.

Q. Going back a little bit, do you recall when the Court originally approved a modified plan for the defendants in this case in August of 1963—you recall that, do you? A. Yes.

Q. Do you recall that we had gotten some preliminary injunctive relief in January or February, providing for admission of children of some named plaintiffs to specific schools? A. Yes.

Q. And do you remember that when the Court approved the plan in August of 1963 providing for the desegregation of the first three grades in September of 1963, that some

of those children of named plaintiffs were in grades higher than the third grade, the Walters children and, I believe, the Monroe girl, and one girl was finishing Tigrett Junior High School, I believe, or something like that? A. Yes.

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Q. And do you recall that application was made to the defendant at that time for relief as to letting those children remain where they had been for that period of time, rather than resegregate them? A. Right.

Q. And do you recall what Mr. Russell Rice's attitude was then and what the Defendant Board's attitude was then? A. Yes. It was that the Court had given a plan, and they would follow that plan.

Q. And they were going to send these children who had been sent to desegregated schools by the Court's preliminary injunctive order back in the segregated schools? A. Yes, sir.

Q. One of the children in a desegregated junior high school was to be sent back to a segregated high school? A. That's correct.

Q. Now, was it necessary for the original plaintiffs to file a motion for further relief in order to get relief in that regard? A. It was.

Q. And did we do so and, as a matter of fact, did the

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Court enter an order in October of 1963, about the 9th of October, granting us that relief? A. Yes.

Q. Did the Court, however, in that order of October, 1963, further approve defendant's plan leaving all the children who were in school in October, in the 1962-63 school year, in the schools where they were, if they wanted to stay there? A. Yes, sir.

Q. Now, did the Board thereafter publish and make known to the public a transfer plan which, in effect, stated as to children entering the first grade, they were to just take the children wherever they wanted to register them to school of their choice, and then the Superintendent would either leave them there, or return them back to the school of their school zone? A. That was a plan.

Q. Now, do you remember that under the defendant's zoning plan which they then had, which was substantially the same as this one, with a couple of minor changes that they have made—do you remember that in the testimony that they gave here in July of 1963, there were many white children zoned for South Jackson? A. Right.

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Q. That there were many children likewise zoned for this Washington-Douglas School? A. Yes.

Q. And that there were likewise some children zoned for the Lincoln Elementary School? A. Right.

Q. Now, did any of those white children show up in those schools in September? A. Not to my knowledge.

Q. Do you know a little girl by the name of Myrtle Gooch? A. I know the family, yes.

Q. Did you have any knowledge of an application that she made to the defendants to attend Alexander School in September of 1963? A. Yes.

Q. What happened to her application? A. Well, the School Board turned her down.

Q. One negro child made application to go to a white school out of a negro zone and they turned her down? A. Right.

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Q. To your knowledge, was she the only negro child in a seven-thousand student school system who made such an

application? A. Yes, I think she was the only one at that time.

Q. And I believe she followed their course, she went on to Alexander School and entered and after leaving her there, they forced her to go back to South Jackson, which was already overcrowded, is that right? A. Right.

Q. Now, this past September, in September of 1964, I have here your affidavit along with the affidavit of some of the others, which says that on or about the 18th of August, 1964, you and all the other people named in your affidavit, including the Lyons child, the Ledbetter child and her mother, the Davis child, the Murrow child, the White and the Robinson child all presented yourselves at the respective white schools that are stated in your affidavits? A. Right.

Q. Now, Mr. Porter, under the defendant's zoning plan—I mean under their transfer plan, that was the procedure you were to follow, to go on to the school of your choice—

and all your children were first grade children, were they not? A. Yes, in this case.

Q. To your knowledge, were any white children, first grade children who came to those schools that day from negro zones turned down, from zones of negro schools—were any children turned down? A. Not to my knowledge.

The Court: Isn't all this stipulated?

Mr. Williams: I am just working up to this, if Your Honor please:

Q. Now, your affidavit states that eleven days later on the 29th of August, 1964, you received a letter from the Superintendent, doesn't it? A. Yes.

Q. Now, is that true? Was that when you received those letters? A. I received mine at 2:00 o'clock.

Q. Mr. Porter, with the passage of ten days' time from the time you registered in the school, did you assume that if the School Board was going to turn down your transfer request that they would let you know in time, so you could

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try to do something about it? A. Actually, when I didn't hear from it on Friday, I assumed that it was accepted, because I felt if I had to go in to see the School Board, then I would have had that chance, and when I received it on Saturday, I didn't have a chance.

Q. Mr. Porter, what did you assume when you got these last minute letters from the Superintendent on the Saturday before school was to open on Monday? A. My assumption was that they did not give me a chance for anything and that it was so done that I would not have a chance to seek any relief at that point; that was my supposition.

Q. As a matter of fact, did you call me up, or have Dr. Bell or somebody call me up and ask me to come down there? A. Yes.

Q. Did I spend my whole Sunday from early morning until late night fooling with you folks over there at Lane College? A. Yes.

Q. Did I bring my dictating machine and dictate fifteen

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or twenty affidavits right there live trying to get bit by bit the information out of each one of you? A. Right.

Q. Each one of you have had a different situation, and we had to organize and try to get affidavits on each one of you? A. That's correct.

Q. Now, you said we got it all on that day. I will ask you whether or not I did not take the information back

on my dictating machine, and then come back on Monday, the 31st, and go over those affidavits down in Mr. Ballard's office, and if Mr. Ballard didn't spend a day with it, too, getting those affidavits signed, if it didn't take us two or three days to get all you folks in and get them signed and get this motion in shape so it could be filed on the 3rd or 4th? A. Yes, that's true.

Q. Now, I will ask you whether or not you did not come down here with me on the 18th of September for pre-trial conference? A. I did.

Q. After the defendants had filed the replication? A.

Yes.

Q. And state whether or not it is true that the Court indicated in that pre-trial conference that we were going to have to come up with something really good in order to get him to have something to chew on on this gerrymandering issue? A. Right.

Q. And state whether or not the Defendant City Attorney and/or the Superintendent stated that they didn't have any surveys of the school system and weren't going to make any? A. That's right.

Q. And state whether or not you then stated that you would make the surveys and requested me to attempt to obtain the necessary technical and professional help? A. Yes. I said to you that I could get the parents to take a personal survey, door by door, and I think when you made that known, the Court said that the record could be given, and then I said to you that we would do the preliminary work on the records if you would get someone to interpret it and put it in good form for presentation here at the court.

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Q. Do you have any idea how many manhours you and your people over at the Lane College have put in on surveying those records? A. Well, I will tell you that I did most of it with some assistance from the students, but it took a month and a half working until about 4:00 o'clock every night, plus the work that the students spent on it gathering the data.

Q. May it please the Court, I would like to have that exhibit—I will hand you there a document which is a copy of an exhibit that has been introduced here purporting to represent the dates that Drs. Bardwell and Herman came down. Incidentally, are they the gentlemen that we engaged for you in connection with this? A. Yes, they are.

Q. Was that with your approval and the approval of all the other plaintiffs in this case? A. Yes. This was at our request.

Q. Now, I will ask you to look at those dates and state whether or not you have personal knowledge of their being here on those dates and whether or not you were present and working with them in trying to get up this data and

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these exhibits? A. Yes. These are the dates, because I had to make reservation for them to come down, even at the local motel.

Q. I believe the first day they came to Knoxville and you came up to Knoxville, is that correct? A. Nashville.

Q. Yes, to Nashville. How many days, all told, did they spend down here in Jackson compiling that information? A. The first time they spent two days, and the next—they came back again and spent two days.

Q. Did I come with them? A. Yes.

Q. Did Mr. Ballard come over, too, and also spend his time with them? A. He did.

Q. Working on this matter? A. Yes.

Q. Now, state whether or not we had another pre-trial conference in this case two weeks ago? A. Yes.

Q. Did you have to come down here in connection with that? A. Yes.

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Q. And did I come, and did Mr. Ballard come? A. Yes.

Q. This is just the proceedings on this motion for further relief. I take it you are familiar with the many proceedings we had from the time this suit was filed, are you not? A. Right.

Q. Mr. Porter, how long have you been in Jackson? A. I will have been in Jackson nine years in September.

Q. And how long have you been interested in this school situation? A. Well, from the beginning.

Q. Has the School Board ever voluntarily granted one single request for desegregation of the school system, except during that brief period when it thought that it could apply the pupil assignment law? A. That is the only time.

Q. And how many negroes did it let in during that time? A. Three—originally three, and the next year they let four more. But the first year they had permitted three, at Tigrett Junior High.

Q. How long had you all been requesting the School

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Board to desegregate the school system down here? A. Well, I came there in '56.

Q. Two years after the first decision, is that right? A. Yes, and I think before my coming, I think something had been done, but I sort of got involved then. I don't know

what happened before '56, but I know in '56 organizational activities started to try to get these schools desegregated.

Q. Mr. Porter, I have several letters which are the authentic original copies of letters that you handed to me. Will you look at those and see if you can identify them?

The Court: Mr. Rice, do you want to look at them?

Mr. Rice: Well, I don't really think it is necessary. I don't think it makes any difference. I will look at them.

I think we have stipulated on those anyway.

Mr. Williams: Well, I won't clutter up the Court's file, then.

The Court: All right, sir.

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By Mr. Williams:

Q. Mr. Porter, were you with the original plaintiffs when they first came to Nashville and engaged us? A. No, I didn't go to Nashville with them, but I knew that they all went. I didn't go with them, but I was with them before they left Jackson. I did not accompany them to Nashville, though. I knew they were enroute.

Q. But you knew that we didn't come down here to Jackson and ask them to let us handle this case? A. No, you didn't. We requested it.

Mr. Williams: I believe that is all.

Mr. Rice: Nothing further.

The Court: Do you have any further proof?

Mr. Rice: I have Mrs. McLemore to testify in regard to the symphony problem.

The Court: All right.

Plaintiffs' Exhibit 26

TOTAL ENROLLMENT AT MERRY JUNIOR HIGH SCHOOL
1964-65

Grade	Total Enrollment
7	268
8	287
9	197
Total	752

All Negro

TOTAL ENROLLMENT AT LINCOLN ELEMENTARY SCHOOL
1964-65

Grade	Total Enrolled
1	136
2	122
3	123
4	111
5	105
6	112
Total	709

All Negro

Plaintiffs' Exhibit 26

TOTAL ENROLLMENT AT SOUTH JACKSON ELEMENTARY SCHOOL
1964-65

Grade	Total Enrolled
1	120
2	112
3	103
4	88
5	101
6	65
Total	589

All Negro

TOTAL ENROLLMENT HIGHLAND PARK SCHOOL
1964-65

Grade	Total Enrolled
1	99
2	107
3	103
4	94
5	98
6	89
Total	590

All White

Plaintiffs' Exhibit 26

TOTAL ENROLLMENT AT TIGRETT JUNIOR HIGH
1964-65

Grade	Total Enrolled
7	251
8	228
9	220
Total	699

All White

TOTAL ENROLLMENT WASHINGTON DOUGLASS SCHOOL
1964-65

Grade	Total Enrollment
1	86
2	75
3	65
4	72
5	69
6	67
Total	434

All Negro

TOTAL ENROLLMENT AT MERRY SENIOR HIGH SCHOOL
1964-65

Grade	Total Enrollment
10	237
11	189
12	164
Total	590

All Negro

Plaintiffs' Exhibit 26

TOTAL ENROLLMENT AT JACKSON SENIOR HIGH SCHOOL
1964-65

Grade	Total Enrollment
10	316
11	266
12	266
Total	848

White	Negro
847	1

TOTAL ENROLLMENT ALEXANDER ELEMENTARY SCHOOL
1964-65

Grade	Total Enrolled
1	129
2	135
3	109
4	105
5	119
6	118
Total	715

White	Negro
628	87

Plaintiffs' Exhibit 26

TOTAL ENROLLMENT WHITEHALL SCHOOL
1964-65

Grade	Total Enrollment
1	69
2	56
3	58
4	51
5	55
6	45
Total	324

White	Negro
308	16

TOTAL ENROLLMENT PARKVIEW ELEMENTARY SCHOOL
1964-65

Grade	Total Enrolled
1	120
2	129
3	107
4	98
5	107
6	94
Total	655

White	Negro
654	1

Plaintiffs' Exhibit 26

TOTAL ENROLLMENT AT JACKSON JUNIOR HIGH SCHOOL
1964-65

Grade	Total Enrollment
7	156
8	148
9	128
Total	432

White	Negro
431	1

TOTAL ENROLLMENT WEST JACKSON SCHOOL
1964-65

Grade	Total Enrolled
1	100
2	88
3	67
4	71
5	69
6	72
Total	467

White	Negro
453	14

Memorandum Decision of the United States District Court for the Western District of Tennessee

(filed July 30, 1965)

[Caption Omitted]

Plaintiffs have filed motions for additional relief, which raise these issues:

1. Whether the assignment and transfer plan and policies as actually carried out by the defendants violate plaintiffs' constitutional rights, and if so, to what extent must the plan or policies be amended;

2. Whether the amended unitary zones for elementary schools and the proposed unitary zones for junior high schools are gerrymandered to maximize segregation and thereby violate plaintiffs' constitutional rights;

3. Whether the plan for gradual desegregation heretofore approved by the court, viewed as of now, meets the constitutional standard of "all deliberate speed";

4. Whether plaintiffs are entitled, under the Constitution, to an order requiring the desegregation of faculty, administrative and supporting personnel, and faculty in-service training programs;

5. Whether plaintiffs are entitled, under the Constitution, to an order prohibiting segregation in curricular and extra-curricular activities;

6. Whether plaintiffs are entitled to recover attorneys fees incurred in connection with these motions.

We will dispose of these issues in the order in which they are set out above.

Memorandum Decision

At the outset it should be noted, as we have indicated, that plaintiffs are asserting Fourteenth Amendment rights alone, and are asserting no rights under any Act of Congress.

In dealing with the multifarious issues that may be presented in school desegregation cases, there frequently is difficulty in deciding a particular issue even if the applicable principle of law has been fairly well crystalized. This is especially true in this field because, even though so crystalized, an applicable principle is of necessity a general principle which must be applied to myriad factual situations. More difficulty is encountered, however, when an underlying general principle has not yet become clear. An example of this is the lack of complete clarity as to whether the Constitution requires only an abolition of compulsory segregation based on race or requires something more. This general question must first be answered before we can deal with the assignment and transfer issue and the gerrymandering issue.

This court has heretofore considered the question as to whether the Constitution requires only an abolition of compulsory segregation based on race. *Vick, et al.* v. *Board of Education of Obion County, Tennessee,* 205 F. Supp. 436 (W.D. Tenn. 1962); *Monroe, et al.* v. *City of Jackson, Tennessee,* 221 F.Supp. 963 (W.D. Tenn. 1963); and *Monroe, et al.* v. *Madison County, Tennessee,* 229 F. Supp. 580, (W.D. Tenn. 1964). The latter two opinions were rendered at earlier stages of the separate proceedings in this action. We concluded in these opinions that abolition of segregatio nbased on race is all that the Constitution requires. We based this conclusion not only on our interpretation of the second *Brown opinion* (349 U.S. 294 (1954)) and *Cooper* v. *Aaron,* 358 U.S. 1 (1958), but also on the now famous specific statement to that effect

in *Briggs* v. *Elliott*, 132 F.Supp. 776 (E.D. S.C. 1955), which was a *per curiam* opinion by three-judge court presided over by Judge Parker of the Court of Appeals for the Fourth Circuit. However, plaintiffs again earnestly contend that the Constitution requires an integrated education, and so we have taken this occasion again to review the law.

We find that the following opinions, among others, cite and approve the statement in *Briggs* v. *Elliott, supra*, to the effect that the Constitution requires only an abolition of compulsory segregation based on race: *Kelley* v. *Boar dof Education of Nashville*, 270 F.2d 209, 226 (6th Cir. 1959); *Bell et al.* v. *School City of Cary*, 324 F.2d 209, 213 (7th Cir. 1963); *Griffin* v. *Board of Supervisors of Prince Edward County*, 322 F.2d 332, 336 (4th Cir. 1963); *Dillard* v. *School Board of City of Charlottesville*, 308 F.2d 920, dissent at p. 926, (4th Cir. 1962); *Boson* v. *Rippy*, 285 F.2d 43, 48 (5th Cir. 1960); *Avery* v. *Wichita Falls Independent School Dist.*, 261 F.2d 230, 233 (5th Cir. 1957); *Armstrong* v. *Board of Education of Birmingham*, 323 F.2d 333, dissent at p. 346 (5th Cir. 1963); *Taylor* v. *Board of Education of New Rochelle*, 294 F.2d 36, dissent at p. 47 (2nd Cir. 1961). It is interesting to note that the Fifth Circuit in a very recent case (*Singleton* v. *Jackson Municipal Separate School Dist.*, —— F.2d ——, decided June 22, 1965), recognizing that it had more than once approved the statement in *Briggs*, said that it now "should be laid to rest" and that ". . . the second *Brown* opinion clearly imposes on public school authorities the duty to provide an integrated school system." There is other authority in support of the view now taken by the Fifth Circuit, but the clear weight of authority in the Courts of Appeal and District Courts sup-

ports the view taken in *Briggs* and, as stated, our Court of Appeals in the *Kelley* case, *supra*, seems to subscribe to the *Briggs* view.

This question as to what the Constitution requires comes into sharper focus in two different contexts: one is a situation in which "honestly" arrived at unitary zones result in *de facto* school segregation because of existing racial housing patterns; the other is a situation in which a voluntary assignment and transfer provision, not based on race, results in the continuance of segregation. In *Northcross et al.* v. *Board of Education of Memphis*, 333 F.2d 661 (6th Cir. 1964) our Court of Appeals recognized that there is no constitutional obligation to draw zone lines to maximize integration. See also, to the same effect, *Downs et al.* v. *Board of Education of Kansas City*, 336 F.2d 988 (10th Cir. 1964), cert. denied 380 U.S. 914 (1965). The Supreme Court has not dealt specifically with the first situation, but it has done so with the second. In *Goss, et al.* v. *Board of Education of City of Knoxville*, 373 U.S. 683 (1963), the Supreme Court struck down transfer provisions which allowed pupils who, under the rezoning, would be required to attend a school in which they would be in a racial minority to transfer to a school in which they would be in a racial majority. In so doing, the Court said at pp. 686-687:

> "It is readily apparent that the transfer system proposed lends itself to tperpetuation of segregation. Indeed, the provisions can work only toward that end. While transfers are available to those who choose to attend school where their race is in the majority, there is no provision whereby a student might transfer upon request to a school in which his race is in a

minority, unless he qualifies for a 'good cause' transfer. As the Superintendent of Davidson County's schools agreed, the effect of the racial transfer plan was 'to erpmit a child [or his parents] to choose segregation outside of his zone but not to choose segregation outside of his zone.' Here the right of transfer, which operates solely on the basis of a racial classification, is a one-way ticket leading to but one destination, i.e., the majority race of the transferee and continued segregation. This Court has decided that state-imposed separation in public schools is inherently unequal and results in discrimination in violation of the Fourteenth Amendment. Brown v. Board of Education, 347 U.S. 483, 98 L.ed 873, 74 S. Ct. 686, 38 ALR 2d 1180 (1954). Our task then is to decide whether there transfer provisions are likewise unconstitutional. In doing so, we note that if the transfe rprovision were made available to all students regardless of their race and regardless as well of the racial composition of the school to which he requested transfer we would have an entirely different case. Pupils could then at their option (or that of their parents) choose, entirely free of any imposed racial considerations, to remain in the school of their zone or to transfer to another.

"Classification based on race for purposes of transfers between public schools, as here, violate the Equal Protection Clause of the Fourteenth Amendment."

And the Court further said at pp. 688-689:

"The alleged equality—which we view as only superficial—of enabling each race to transfer from a de-

segregated to a segregated school does not save the plans. Liwe arguments were made without success in Brown, 347 U.S. 483, 98 L.ed. 873, 74 S.Ct. 686, 38 ALR 2d 1180, supra, in support of the separate but equal educational program. Not only is race the factor upon which the transfer plans operate, but also the plans lack a provision whereby a student might with equal facility transfer from a segregated to a desegregated school. The obvious one-way operation of these two factors in combination underscores the purely racial character and purpose of the transfer provisions. We hold that the transfer plans promote discrimination and are therefore invalid.

"This is not to say that appropriate transfer provisions, upon the parents' request, consistent with sound school administration and not based upon any state-imposed racial conditions, would fall. Likewise, we would have a different case here if the transfer provisions were unrestricted, allowing transfers to or from any school regardless of the race of the majority therein. But no official transfer plan or provision of which racial segregation is the inevitable consequence may stand under the Fourteenth Amendment."

It appears that the Court held that these transfer provisions could not stand for two separate reasons: first, on their face they contained an invalid racial classification, and second, they could operate only to perpetuate segregation. However, the Court expressly recognized that a transfer provision or policy which did not contain a racial classification and which allowed transfers as readily to a school in which the applicant would be in a racial minority as it allowed transfers to a school in which the

applicant would be in a racial majority would be valid. The Court therefore did not hold that integration is a required end result of the provision or policy. And, as we said in our earlier opinion in this very action (221 F. Supp. 968, 974), it is difficult to see how it could be held that segregation resulting from purely voluntary choice could violate the Fourteenth Amendment as it would not be "state-imposed separation." Similarly, it is difficult to see, for the same reason, ho wit could be held that segregation that resulted from "honestly" arrived at geographical zoning could violate the Fourteenth Amendment. We therefore conclude, as we concluded before, that the Constitution does not require integration and that it only requires the abolition of compulsory segregation based on race.

We come now to consider the contention of plaintiffs that the assignment and transfer plan or policy as actually carried out by defendants deprives plaintiffs of their constitutional rights, and if so, to what extent must the plan or policies be amended. In the plan heretofore approved by this Court in the summer of 1963, pupils already attending school in the system during the 1962-63 school year were to be allowed to continue in the school they were attending until graduation irrespective of whether they lived in the new unitary zone of that school, provided that all pupils who lived in the unitary zone of the school and who were entitled for that reason to attend the school would have a preferential right to attend. We approved this provision for reasons set out in our opinion (221 F. Supp. 968, 972), pointing out that the provisions would expire by its own terms in a relatively few years. With respect to assignments and transfers generally, we merely held (221 F. Supp. 965, 971) that defendants could adopt any plan o rpolic ywith respect to desegregated grades,

provided that no assignment or transfer could be based on race or have as its purpose the delay of desegregation as contemplated by the plan.

It appears that defendants, in two particulars, have gone beyond what they were allowed to do with respect to assignments and transfers:

1. They have allowed pupils as a matter of course to be assigned or to be transferred out of their unitary zones to a school in which they would be in a racial majority and have not allowed pupils as a matter of course to be assigned or to be transferred out of their unitary zones to a school in which they would be in a racial minority. More specifically, they hiave allowed white pupils as a matter of course to attend schools, outside of their unitary zones, in which white pupils predominate, and have allowed Negro pupils as a matter of course to attend schools, outside of their unitary zones, attended only by Negroes but they have denied Negroes (and specifically intervening plaintiffs) the right to attend predominantly white schools outside of their unitary zones. This plan or policy clearly deprives plaintiffs of their constitutional rights, as was held by the Supreme Court in the *Goss* case, *supra*, and is clearly contrary to our prior holding.

2. They have treated pupils, after they were allowed in 1963-64 and 1964-65 to attend schools outside of their unitary zones, as if they were thereafter covered by the approved provision allowing only pupils attending in the system in 1962-63 to continue until graduation in the school in which they were then enrolled. This approved provision, by its own terms, applied only to pupils attending in the system in 1962-63.

If defendants intend to continue this policy of allowing white and Negro pupils to attend schools outside of their unitary zones where they will be in a racial majority, they must, beginning with the 1965-66 school year, also allow white and Negro pupils to the same extent and under the same terms to attend schools outside of their unitary zones where they will be in a racial minority. This is required by the *Goss* case, *supra*, and by the decree heretofore entered. Moreover, those Negro pupils who have heretofore applied for and been denied the right to attend predominantly white schools outside their unitary zones must be admitted to such schools, at least in the school year 1965-66, if they so desire. This is necessary to vindicate the Constitutional rights which have been denied them, whether or not the defendants choose to follow the policy herein approved, of allowing pupils to attend schools outside their unitary zones irrespective of whether they will be in a racial majority or minority.

It appears that, in carrying out their policy of allowing white and Negro pupils to attend schools outside their unitary zones in which they would be in a racial majority, defendants have not required these pupils to register in the schools of their unitary zones and then to apply for a transfer. Rather, they have allowed these pupils to register directly in the schools outside of their zones. Plaintiffs contend that, if defendants choose to go forward with the amended policy and plan which the Court is here approving, each pupil should be required each year to register in the school of his unitary zone and apply for a transfer; this is necessary, argue plaintiffs, to make the choice more realistic. More specifically, it is argued that, given the long history of segregation, white and Negro pupils would be much less likely to choose to attend the school of the

unitary zone in which they live, if they would be in racial minority in that school, if they are allowed to register directly in a school in another zone in which they would be in a majority. While we believe, as we have held, that a system of voluntary choice is constitutional, we also believe that every safeguard should be had in insure that choices will be conscious and considered choices and that such a choice will more likely be made if pupils are required each year initially to register in the school of the zone in which they live. Accordingly, we conclude that this must be required by defendants.

With respect to the other particular in which defendants have gone beyond what they were allowed to do, pupils who were not in the school system in 1962-63 shall not have the right, as do pupils who were attending during that year, to continue until graduation in a school outside their unitary zone.

The next issue presented is whether the amended unitary zones for elementary schools and the proposed unitary zones for punior high schools are gerrymandered so as to maximize segregation. Before dealing with this issue, we should note that plaintiffs first contend that even if the zones are not gerrymandered, they will create a large measure of *de facto* segregation, and therefore they must be redrawn to bring about more integration. However, we dealt with this contention in our earlier opinion in this case (221 F.Supp. 968, 973), and we have heretofore dealt with it again in this opinion. We have reached the conclusion that "honestly" drawn zone lines, which result in *de facto* segregation, do not deprive plaintiff of any constitutional rights.

In approaching the gerrymandering issue, we must first ascertain from the adjudicated cases what constitutes

gerrymandering in school zoning. The *Northcross* case, *supra,* and the *Downs* case, *supra,* hold that a school board may, in its discretion, use any rational basis for drawing zone lines but that it, of course, cannot consider race as a factor. *Northcross* specifically holds that the motive of minimizing the disturbance of the people and the motive of preserving school loyalties are not proper considerations in zoning. *Northcross* recognized that such considerations as utilization of the buildings, proximity of the pupils to the schools, and natural boundaries are proper considerations. *Northcross* also holds that, when challenged, the burden of proof is on the school board to show that boundaries were not drawn with a view to preserve the maximum amount of segregation.

In an earlier stage of these proceedings the Court approved elementary school zones as submitted by defendants but, on these motions for further relief, allowed plaintiffs to reopen the question as to whether these zones are gerrymandered. Defendants have redrawn the boundary between West Jackson and South Jackson elementary schools and, as so amended, have submitted these elementary school zones for approval. Defendants have, pursuant to an order of the Court heretofore entered, established unitary zones for the three junior high schools and, by consent of all parties, the hearing with respect to these zones was held concurrently with the hearing on plaintiffs' motions for further relief. It is the contention of plaintiffs that both the elementary school zones and the junior high school zones are gerrymandered and that the Court should appoint a master to redraw the zone boundaries or require the defendants to redraw them and resubmit them for approval.

Defendants have prepared and introduced into evidence maps reflecting the location of the schools, the zone boundaries, and the location of the homes of white (in blue) and Negro (in red) children of school and pre-school age. Defendants also offered in evidence exhibits showing the capacity of the schools, the number of pupils that have been attending each, and the average size of classes. The superintendent testified that the zones were drawn without regard to race and are the result of a consideration of utilization of buildings, proximity of pupils to the schools and natural boundaries.

In addition to contending that defendants' proof shows on its face that the zones are gerrymandered, plaintiffs offered two expert witnesses, who had also prepared maps, and who contended that the zones are gerrymandered. However, the value of the testimony of these experts was undercut by the fact that they assumed that it is the duty of defendants to maximize integration because of educational benefits that would, in their opinion, flow therefrom. The value o ftheir testimony with respect to elementary schools was further somewhat undercut because their maps were aimed to show the amount of *de facto* segregation that has resulted after two years under the plan. However, in view of voluntary transfers by white and Negro pupils, the degree of actual segregation in these schools does not itself show that the zones are gerrymandered. The value of the testimony of these experts with respect to junior high schools was somewhat undercut because they not only again assumed a duty to maximize integration but also assumed that defendants had the duty to adopt a "feeder" system whereby certain elementary schools would send their graduates only to a particular junior high. These experts admitted that in many instances the question as to where a

boundary should be drawn is one of judgment as to which honest experts could disagree.

We believe that, under the *Northcross* case, *supra,* the question whether the zones are gerrymandered should be determined primarily by consideration of the utilization of buildings, proximity of pupils to the schools, and natural boundaries.

It would be useless to set out in this opinion the relevant facts with respect to utilization, proximity and natural boundaries as to each elementary school zone. (It should be noted here that, as to utilization, the best information we have is the capacity and enrollment of each school during the past school year, which, in view of voluntary transfers, may not be an accurate projection as to the coming year and future years.) Rather, we will discuss only those boundaries as to which there apepars to be gerrymandering.

The most recent figures show that South Jackson is over enrolled and that West Jackson is under capacity. The boundary between these unitary zones as approved by the Court places Negro pupils who live much closer to West Jackson (which has been a predominantly white school but has had 14 Negro pupils) in the zone of South Jackson (which has been an all Negro school). Defendants, at the hearing, proposed to redraw that line so as to partially correct this situation but their proposal does not completely correct it. We conclude that the south line of the West Jackson zone should extend eastwardly from Poplar along Main to Royal.

The most recent figures show that both Parkview (which has been a predominantly white school with only one Negro pupil) and Washington-Douglas (which has been an all Negro school) are under capacity. The boundary between these unitary zones as approved by the Court places Negro

pupils who live much closer to Parkview in the zone of Washington-Douglas. And while the proof shows that there is considerable new development in the eastern part of the Parkview zone, there is nothing to show that Parkview would be over capacity if its zone is extended westwardly to include these Negro pupils. We conclude that the zone of Parkview should be extended westwardly to include the area bounded by Chester on the south, Royal on the west and College on the north.

The most recent figures show that both Alexander (which has been a predominantly white school but has had 87 Negro pupils) and Lincoln (which has been an all Negro school) are under capacity. The boundary between these unitary zones as approved by the Court follows the I.C.R.R. and G. M. & O. R.R. tracks southwesterly until it reaches Alice and then leaves these tracks and runs west on Alice to Royal and south on Royal to Preston. This means that there are Negro pupils who live much closer to Alexander but who must cross the railroad tracks to Lincoln. It is true that Lincoln has been somewhat more under capacity than Alexander. However, if it should become necessary, defendants could make an adjustment in the bounary between the Alexander zone and the Highland Park zone, the latter school also being under capacity. We conclude that the portion of the Lincoln zone bounded by the railroad tracks on the east, Alice on the north, Royal on the west and Preston on the south should be included in the Alexander zone.

There are three junior high schools in Jackson. Tigrett and Jackson have been all white schools and Merry has been all Negro. Tigrett is located in the western section, Merry is located in the central section and Jackson is located in the eastern section. The zones proposed by the defendants would, generally, allocate the western section

to Tigrett, the central section to Merry, and the eastern section to Jackson. The boundaries follow major streets or highways and railroads. According to the school population maps, there are a considerable number of Negro pupils in the southern part of the Tigrett zone, a considerable number of white pupils in the middle and northern parts of the Merry zone, and a considerable number of Negro pupils in the southern part of the Jackson zone. The location of the three schools in an approximate east-west line makes it inevitable that the three zones divide the city in three parts from north to south. While it appears that proximity of pupils and natural boundaries are not as important in zoning for junior highs as in zoning for elementary schools, it does not appear that Negro pupils will be discriminated against. The only real alternative offered by plaintiffs is to adopt a "feeder" syste mwhereby certain elementary schools would "feed" pupils to a particular junior high, but there is no constitutional requirement that this particular system be adopted. We conclude that the proposed junior high school zones proposed by defendants do not amount to unconstitutional gerrymandering.

Under the plan for gradual desegregation approved by the Court in the summer of 1963, the first three grades were desegregated in the school year 1963-4, the next three grades i n1964-5, and thereafter two additional grades are to be desegregated each succeeding year. Under this plan, the 7th and 8th grades only would be desegregated in the coming year, 1965-6. Plaintiffs moved the Court to amend the plan to require all remaining grades be desegregated in 1965-6, and the Court has allowed them to reopen this question. They contend that "all deliberate speed" requires this action.

Memorandum Decision

In view of the undisputed proof that no substantial administrative problems have so far been met, we conclude plaintiffs are entitled to some acceleration in the plan. More particularly, we conclude that all of the junior high grades (7th, 8th and 9th) should be desegregated in the year 1965-6; and we further conclude that all of the senior high grades (10th, 11th and 12th) should be desegregated in 1966-7.

Plaintiffs also moved the Court to order desegregation of teachers, and the administrative and supporting personnel. At an earlier stage of this proceeding, we held that plaintiffs are entitled to assert a claim for desegregation of teachers and principals, but that they are not entitled to assert a claim for desegregation of other personnel. We took under advisement the claim with respect to teachers and principals pending implementation of the plan, and we ordered struck from the complaint he claim with respect to other personnel. (221 F. Supp. 968, 972) This determination was made on the basis of the clear holding to that effect by our Court of Appeals in *Mapp* v. *Board of Education of Chattanooga,* 319 F.2d 571, 576 (6th Cir. 1963). Accordingly, we have for consideration only the claim for desegregation of teachers and principals.

We first must ascertain the guidelines for determining whether plaintiffs are entitled to desegregation of faculty and principals. We must do this from a very limited number of cases which deal with the problem. As stated, our Court of Appeals held that plaintiffs in such a case as this are entitled to press this claim as part of their claim "to an education free of any consideration of race." It also held that they have no right to assert any constitutional claims the teachers and principals may have. (*Mapp,*

supra.) However, the Court was not specific, saying in part (319 F.2d 571, 576):

> "We agree that the teachers, principals and others are not within the class represented by plaintiffs and that plaintiffs cannot assert or ask protection of some constitutional rights of the teachers and others, not parties to the cause. We, however, read the attack upon the assignment of teachers by race not as seeking to protect rights of such teachers, but as a claim that continued assigning of teaching personnel on a racial basis impairs the students' rights to an education free from any consideration of race.
>
> • • • • •
>
> "... [W]e think it appropriate that the stricken allegations of the complaint, insofar as they relate to the assignment of teachers and principals, be restored to the pleading and that decision of the legal question presented await developments in the progress of the plan approved. Nothing we have said need call for any present taking of testimony on the subject of teacher and principal assignement. Within his discretion, the District Judge may determine when, if at all, it becomes necessary to give consideration to the question under discussion. We affirm, however, the order granting the motion to strike, to the extent that it applies to allegations relating to the hiring and assignment of school personnel other than teachers and principals."

In *Augustus* v. *Board of Public Instruction of Escambia County, Florida,* 306 F.2d 862 (5th Cir. 1962) the Court held, as *Mapp* later held, that it was improper to strike this

claim for relief before the trial on the merits and indicated that at such hearing relief could be granted. In *Board of Public Instruction of Duval County, Florida* v. *Braxton*, 324 F.2d 616 (5th Cir. 1964) the Court held (one judge dissenting) that the trial court was within its proper discretion in ordering a desegregation of faculty in a decree providing for desegregation of pupils. In *Bradley* v. *School Board of Richmond, Virginia*, 345 F.2d 310 (4th Cir. 1965) the Court held that the trial court was within its discretion in denying an application for desegregation of teachers. It pointed out that this issue had been ignored at the trial, and said that the granting of such relief should depend upon a balancing of the need therefor to protect the constitutional rights of the pupils against the effect it would have on the administration of the schools and the efficiency of the staffs. Two judges, dissenting on this question, said at p. 324:

> "The composition of the faculty as well as the composition of its student body determines the character of a school. Indeed, as long as there is a strict separation of the races in faculties, schools will remain 'white' and 'Negro,' making student desegregation more difficult. The standing of the plaintiffs to raise the issue of faculty desegregation is conceded. The question of faculty desegregation was squarely raised in the District Court and should be heard. It should not remain in limbo indefinitely. After a hearing there is a limited discretion as to when and how to enforce the plaintiffs' rights in respect to this, as there is in respect to other issues, since administrative considerations are involved; but the matter should be inquired into promptly. There is no legal reason

why desegregation of faculties and student bodies may not proceed simultaneously."

In one District Court case in Tennessee, *Sloan* v. *Tenth School District of Wilson County, Tennessee,* 9 Race Rel. L. Rep. 1306 (M.D. Tenn. 1964), the Court ordered desegregation of faculties, and we understand that this has been done by consent order in several other cases involving school districts of this state.

We gleam from the foregoing cases that this application for desegregation of faculties and principals largely addresses itself to the discretion of the trial court and that in exercising its discretion the Court should consider the current need for this action in effecting abolition of compulsory segregation of pupils as against any problems involved in taking this step.

The defendants contend that there is no current need to desegregate the faculties and principals and that the teachers might be seriously adverse to such action. Plaintiffs offered some testimony from Negro parents that Negro pupils are reluctant to attend schools in which all of the teachers are white, some because they are afraid that the white teachers would require higher performance and perhaps others because they are afraid that they would not receive fair treatment. These witnesses gave no specific examples. It should be noted, however, that the intervening plaintiffs, at least, are seeking to attend schools with all white faculties. Plaintiffs' education experts largely testified in terms of the educational desirability of mixed faculties, but we do not believe that this is a constitutional consideration. Plaintiffs' sociology expert testified that in his investigation of the question at Nashville he had not turned up much evidence that fear of going to school to

all white teachers is a deterrent, but he also testified that having all Negro teachers stigmatizes a school as a "Negro" school which tends to keep it segregated.

We do not believe that the proof of the plaintiffs is sufficiently strong to entitle them at this time to an order requiring integregation of the faculties and principals. At the same time we do not believe that they are, on this proof, entitled to some relief, and this Court in its discretion may fashion the remedy which it believes to be consistent with the need shown. It is obvious that the defendants have followed a policy of assigning white teachers, simply because of their race, only to schools in which the pupils are all or predominantly white, and of assigning Negro teachers, simply because of their race, only to schools in which the pupils are all Negroes. We believe that this policy should be rescinded, and that a white teacher should not be prohibited, because of his or her race, from teaching in a school in which the pupils are all or predominantly Negro, and that a Negro teacher should not be prohibited, because of his or her race, from teaching in a school in which the pupils are all or predominantly white. This would mean that white and Negro teachers, who so desire, would not be barred, because of their race, from teaching pupils all or a majority of whom were of the other race. But it also would mean that none would be forced to do so and would mean, that, of course, all other usual factors could be considered in determining the assignment of teachers.

Plaintiffs next contend that they are entitled to an order prohibiting all segregation in curricular and extra-curricular activities of desegregated grades. As to curricular activities, we were under the impression that such a provision had been included in the decree heretofore entered,

but for some reason it was omitted. In any event, plaintiffs are entitled to an order providing that, with respect to desegregated grades, segregation is prohibited as to all school facilities, and as to all curricular activities, including athletics.

The question regarding extra-curricular activities is more difficult. Certainly, as to school-sponsored activities, there must be no discrimination based on race by the defendants, and plaintiffs are entitled to an order to that effect. However, we must deal in particular with an incident which has occurred which plaintiffs contend amounted to discrimination in a school-sponsored activity. It seems that the private organization which operates the Jackson Symphony Orchestra invited the pupils in certain grades in those elementary schools in which the pupils are all or predominantly white to attend a concert during school hours. The pupils in the same grades in elementary schools in which the pupils are all Negroes were not invited. Defendants accepted this invitation, and the invited pupils, including those Negro pupils who were in those grades, attended the concert. The proof showed without question that defendants were not motivated by racial considerations in accepting this invitation. We believe that this occurrence does not constitute unconstitutional discrimination. On the contrary, we believe that defendants may in their discretion allow pupils to attend an outside activity, whether it be a concert, a speaker or whatever, so long as defendants are not motivated by racial considerations.

Plaintiffs also seek an order prohibiting segregation of teacher in-service training. Although the proof is not completely clear, it appears that the only such segregation that remains results from the fact that the white teachers and

the Negro teachers are members of separate professional organizations. It appears without dispute that defendants do not control the policies of these organizations. In any event, as heretofore indicated, the *Mapp* case, *supra*, holds that plaintiffs have no standing to assert any constitutional claims that the teachers may have and may assert a claim for teacher desegregation only in support of their constitutional right, as pupils, to an abolition of discrimination based on race. The assertion by plaintiffs that what remains of segregation in teacher in-service training has an effect on their right as pupils is, on the proof in this case, extremely tenuous. We deny this application for relief.

Plaintiffs last contend that defendants should be required to pay their attorneys' fees and to pay expenses incurred by plaintiffs in the employment of certain expert witnesses.

With respect to attorneys' fees, it is incumbent on plaintiffs first to prove a legal liability on their part to pay such fees, that is, plaintiffs must prove an express or implied contract to pay either a fee specific in amount or a reasonable fee. 20 C.J.S., Costs, Sec. 218, p. 453 et seq. The proof here shows that when some of intervening plaintiffs were denied the opportunity to attend the schools to which they had applied, they called on these attorneys to represent them. The attorneys, after interviewing these plaintiffs, forthwith filed the first motion for additional relief and thereafter handled this litigation. While there was some proof that the attorneys might be able to look elsewhere for payment in the event intervening plaintiffs did not pay them, there was certainly an implied contract between these plaintiffs and the attorneys that a reasonable fee would be paid by them.

Memorandum Decision

In *Bell* v. *School Board of Powhatan County, Virginia,* 321 F.2d 494, 500 (4th Cir. 1963), a school desegregation case, the court held that the trial court had abused its discretion in refusing to allow plaintiffs to recover attorneys' fees. In that case the school authorities had been guilty of ". . . a long continued pattern of evasion and obstruction. . . ." In a later school segregation case, the Fourth Circuit affirmed the trial court in its denial of attorneys' fees, but recognized that a fee should be allowed ". . . when it is found that the bringing of an action should have been unnecessary and was compelled by the school board's unreasonable, obdurate obstinacy." *Bradley* v. *School Board of the City of Richmond,* 345 F.2d 310 (4th Cir. 1965).

In this case during the summer of 1964 when intervening plaintiffs applied to attend schools outside of their zones, defendants were, as a matter of course, allowing both white and Negro pupils to do so if they would be in a racial majority. It appears that the applications of plaintiffs were denied by the superintendent because they would be in a minority in the schools they sought to attend. The action by the superintendent in denying their applications was in clear violation of the decree of this court, and it was in clear violation of the constitutional rights of these plaintiffs as had been expressly held by the Supreme Court in *Goss, et al.* v. *Board of Education of the City Knoxville,* 373 U.S. 683 (1963), all of which defendants must have, or certainly should have, known. For this reason, plaintiffs are entitled to recover an attorneys' fee for their handling of this aspect of the litigation. It is no answer to say that these plaintiffs did not seek redress from the action of the superintendent by appealing to the defend-

ant Board members. Defendants do not even contend that the superintendent was not acting with authority; it appears that he was following an adopted plan or policy. Moreover, the proof shows that plaintiffs were not advised that their applications had been denied until the Saturday before the Monday that the school session was to begin.

On the other hand, with respect to the other issues presented by these motions for additional relief, it does not appear that defendants have violated any order of this court or have in any wise acted improperly. We therefore award plaintiffs and attorneys fee of $1,000.00 as costs in this cause.

As stated, plaintiffs also seek to recover as costs the fees and expenses of their expert witnesses. However, these experts did not testify on any issue as to which this court has found defendants in violation of its decree or as to any issue as to which the court has found that defendants have acted in disregard of the constitutional rights of these plaintiffs. Moreover, these experts in large measure gave educational or sociological opinions of no particular constitutional relevance. We therefore deny this application.

In closing this opinion, this court would like to point out that there appears to be little communication between the school authorities and the interested Negro leadership in the community. There certainly should be. As desegregation progresses under this plan, there are bound to be points of difference between the Negro citizens and the school authorities as to rights of the Negroes and the obligations of the authorities. These differences should first be the subject of a conference in an effort to compose them amicably. They should be brought to court only when

the differences cannot so be resolved and are of substantial significance.

An order will be prepared for entry by the parties consistent with the rulings in this opinion.

ENTER this 30th day of July, 1965.

/s/ BAILEY BROWN
United States District Judge

A TRUE COPY.

ATTEST:

W. LLOYD JOHNSON, Clerk.

By A. H. SAWYER, DC

Order of the United States District Court for the Western District of Tennessee

(filed August 11, 1965)

[Caption Omitted]

This cause came on before the Honorable Bailey Brown, District Judge, at a pre-trial conference held May 26, 1965 in the Court's Chambers, whereupon the Court did, upon the statement of facts by defendants' counsel to the Court, declare and decide that the manner of application by the defendants of the transfer provisions is unconstitutional unless the defendants allow a transfer of a student from a school in which said student be in the racial majority to a school, outside of his zone, in which such student would be in a racial minority on the same basis that transfers were allowed to a student from a school in which such student is in the racial minority to a school, outside his zone, in which said student would be in a racial majority. The Court further did find and determine that the remaining issues to be heard by the Court at a later hearing would be as follows:

1. Whether or not the elementary school unitary zones previously approved by the Court, as subsequently amended by defendants, amounted to unconstitutional gerrymandering.

2. Whether or not the junior high school unitary zones proposed by defendants amounted to unconstitutional gerrymandering.

3. Whether or not the Court should order a desegregation of faculty and administrative and supporting personnel, including faculty in-service training, in the City Schools of Jackson.

4. Whether or not the Court should order an acceleration of the plan of desegregation heretofore approved by the Court.

5. Whether or not the defendants had discriminated against the plaintiffs in extra-curricular activities.

6. Whether or not plaintiffs should be awarded an attorneys' fee in this proceeding.

This cause thereupon came on to be heard on the 18th day of June, 1965, and upon a former day of the term, before the Honorable Bailey Brown, District Judge, sitting without intervention of a jury, upon the Motion for Further Relief and to add parties as additional and/or intervening plaintiffs, filed by the plaintiffs on 4 September 1964 against the defendants, Board of Commissioners of the City of Jackson, Tennessee, its board members and C. J. Huckaba, Superintendent of City Schools, a replication filed by said defendants to said motion on or about 11 September 1964, the pretrial order entered by the Court on 28 September 1964 allowing the intervention of additional parties plaintiff and granting and denying certain other preliminary relief having to do with preparation for trial of said motion, the supplemental replication to said motion of September 4, 1964 filed by said defendants on or about 12 November 1964, a petition filed by said defendants on or about 13 November 1964 seeking approval of proposed junior high school unitary zones filed concurrently therewith and also seeking consolidation of the hearing on said petition with the hearing upon plaintiffs' said motion for further relief, plaintiffs' specifications of objections to said junior high school unitary zones filed by defendants and their agreement to consolidation of said hearings, the additional mo-

tion for further relief against said defendants filed by the plaintiffs on or about 19 April 1965, the replication of said defendants to said additional motion for further relief of the plaintiffs, filed on or about 18 May 1965, and the exhibits filed by the respective parties to the foregoing pleadings, the evidence introduced by the parties in open court, arguments of counsel and the entire record upon the issues prescribed by the Court at the May 26, 1965 pre-trial conference, from all of which the Court finds and holds that the plaintiffs are entitled to certain relief upon some of the issues, but that the relief sought by plaintiffs should be denied on other issues, as hereinafter provided, and as more fully stated in the Memorandum Decision filed by the Court on 30 July 1965, which is hereby made a part of the record and is adopted as the Findings of Fact and the Conclusions of Law made by the Court upon the various pleadings set forth hereinabove.

IT IS, THEREFORE, ORDERED, ADJUDGED, DECREED AND ENJOINED by the Court as follows:

1. The assignment and transfer plan or policy in the City of Jackson, Tennessee school system as actually carried out by said defendants deprives plaintiffs of their constitutional rights, and must be amended in the following particulars:

(a) If said defendants continue their policy of allowing white and Negro pupils, as a matter of course, to attend schools outside of their unitary zones where they will be in a racial majority, they must, beginning with the 1965-66 school year, also allow white and Negro pupils to the same extent and under the same terms to attend schools, as a matter of course, outside of their unitary zones where they will be in a racial minority. In addition, those Negro pupils

who have heretofore applied for and been denied the right to attend predominantly white schools outside their unitary zones must be admitted to such schools, at least in the school year 1965-66, if they so desire.

(b) In allowing pupils to attend schools outside their unitary zones irrespective of whether they will be in a racial majority or minority, each pupil must be required each year to register in the school of his unitary zone and apply for a transfer, and shall not be permitted to register directly in the school or schools outside of his or her zone.

(c) All pupils who were not in the school system in 1962-63 shall not have the right, as do pupils who were attending during that year, to continue until graduation in a school outside their zone. All such pupils shall be required each year to register in the school of their respective unitary zones and apply for any transfer, if desired.

2. The unitary zones established by defendants and heretofore approved by this Court for the elementary schools of the City of Jackson, as subsequently amended by defendants, in some areas appear to be gerrymandered and will therefore be revised by defendants in the following particulars:

(a) The south line of the West Jackson School zone shall extend eastwardly from Poplar along Main to Royal.

(b) The zone of Parkview School shall be extended westwardly to include the area bounded by Chester on the south, Royal on the west and College on the north.

(c) That portion of the Lincoln School zone bounded by the railroad tracks on the east, Alice on the north, Royal on the west and Preston on the south shall be included in the Alexander School Zone.

3. The proposed junior high school zones proposed by defendants do not amount to unconstitutional gerrymandering and are approved by the Court.

4. Desegregation in the City of Jackson School System will be accelerated as follows: All of the junior high grades (7th, 8th and 9th) shall be desegregated at the beginning of the school year 1965-66; and all of the senior high grades (10th, 11th and 12th) shall be desegregated at the beginning of the school year 1966-67 so that said school system shall be totally desegregated at the beginning of said latter year.

5. The application of plaintiffs for an order requiring integration of faculty is at this time denied. However, the policy of defendants of assigning white teachers only to schools in which the pupils are all or predominantly white and Negro teachers only to schools in which the pupils are all Negro is by this order rescinded to the extent that white teachers, who so desire, will not be barred from teaching in schools in which the pupils are all or predominantly Negro, and Negro teachers, who so desire, will not be barred from teaching in schools in which the pupils are all or predominantly white.

To implement this change in policy, defendants must forthwith, as to substitute teachers, and each year beginning with the year 1966-67, as to all teachers, publicize it and obtain from each teacher an indication of willingness or an indication of objection to teaching in a school in which the pupils are all or predominantly of the other race. All teachers who indicate such a willingness will be assigned to schools without consideration of the race of the teacher or the pupils, but all other usual factors may be considered in assigning teachers. Nothing in this order, however, will

be construed as requiring the assignment of an objecting teacher to a school in which the pupils are all or predominantly of the other race or will be construed as requiring a refusal to employ or a dismissal of a teacher who objects to teaching in such a school. This change in policy will be effective as to substitute teachers during the remainder of the school year 1965-66 and as to all teachers beginning with the school year 1966-67.

6. The Court finds that its previous Judgment entered in this cause failed to include an order requiring defendants to eliminate all racial discrimination and segregation in curricular and school sponsored extra-curricular activities in the City of Jackson School System and the Court so orders. However, the Court has not found the defendants guilty of any unconstitutional discrimination in connection herewith.

7. The application of plaintiffs for an order requiring desegregation of administrative and supporting personnel is denied.

8. As to teacher in-service training and professional activities, plaintiffs are denied relief.

9. Plaintiffs are entitled to recover an attorneys' fee for the handling of that aspect of the litigation pertaining to the application of the intervening plaintiffs in the summer of 1964 to transfer to schools outside of their zones and the defendants' denial of said application in clear violation of the constitutional rights of these plaintiffs. In this connection, the Court finds that these services consisted of interviewing of plaintiffs at Jackson on the day before school

was to begin, preparation and filing of motion, attendance by the attorneys at two pre-trial conferences at Memphis, and preparation of order for entry, and that, therefore, a fee of $1,000.00 for said attorneys would be fair and reasonable and is awarded as costs in this action.

10. The application of plaintiffs to recover as costs the fees and expenses of their expert witnesses is denied.

11. Jurisdiction of the case is retained by the Court pending full implementation of desegregation in the City School System of Jackson, Tennessee, and either party may apply.

ENTER this 11th day of August, 1965.

BAILEY BROWN
United States District Judge

A TRUE COPY.

ATTEST:

W. LLOYD JOHNSON, Clerk.

By A. H. SAWYER, DC

Opinion of the United States Court of Appeals For the Sixth Circuit

Nos. 17,118 and 17,119

BRENDA K. MONROE, *et al.*,

Plaintiffs-Appellants,

v.

BOARD OF COMMISSIONERS, CITY OF JACKSON, TENNESSEE, *et al.*, and COUNTY BOARD OF EDUCATION, MADISON COUNTY, TENNESSEE, *et al.*,

Defendants-Appellees.

APPEAL FROM THE U. S. DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE

Decided July 21, 1967

Before: O'SULLIVAN, PHILLIPS and PECK, Circuit Judges.

O'SULLIVAN, Circuit Judge. In 1963 a suit was filed by Brenda K. Monroe and others, Negro children and their parents, to bring about the desegregation of the public schools of the City of Jackson, and of Madison County, Tennessee.[1]

The District Court required the school authorities to submit plans to accomplish desegregation and ultimately granted the relief sought by approving parts of a submitted plan and ordering other steps to be taken. Separate opin-

[1] The City of Jackson is located in Madison County and the respective school authorities are the Board of Commissioners of the City of Jackson and the County Board of Education of Madison County.

ions were written, one involving the City of Jackson schools, reported as *Monroe* v. *Board of Commissioners of the City of Jackson, Tennessee, et al.*, 221 F. Supp. 968 (W.D. Tenn. E.D. 1963) and the other relating to Madison County schools, reported in *Monroe* v. *Board of Commissioners, etc., et al.*, 229 F. Supp. 580 (W.D. Tenn. E.D. 1964). Appeals to this Court from these cases were dismissed by agreement. Obedient to the above decisions, all grades of the schools involved have been desegregated.

The litigation with which we now deal arises from Motions for Further Relief filed in the District Court by plaintiffs. By these motions, plaintiffs sought to accomplish greater integration of the school children, desegregation of the teaching staffs, and the enjoining of described practices of the school authorities which were alleged to be violative of the District Judge's original decrees and contrary to new developments in the law. The District Judge, again, dealt separately with the city and the county schools in disposing of the Motions for Further Relief. His decision as to the city schools is reported in *Monroe* v. *Board of Commissioners, City of Jackson*, 244 F. Supp. 353 (W.D. Tenn. E.D. July 30, 1965) and as to the County Schools in *Monroe* v. *Board of Education, Madison County, Tennessee, et al.*, —— F. Supp. —— (W.D. Tenn. E.D. August 2, 1965). These are the cases before us on this appeal; the plaintiffs are the appellants. These opinions, with the earlier ones reported at 221 F. Supp. 968 and 229 F. Supp. 580, *supra*, set out the facts and we will restate them only where needed to discuss the present contentions of the plaintiffs-appellants.

Opinion of the United States Court of Appeals For the Sixth Circuit

1) ***Compulsory integration.***

Appellants argue that the courts must now, by reconsidering the implications of the *Brown* v. *Board of Education* decisions in 347 U.S. 483 (1954) and 349 U.S. 294 (1955), and upon their own evaluation of the commands of the Fourteenth Amendment, require school authorities to take affirmative steps to eradicate that racial imbalance in their schools which is the product of the residential pattern of the Negro and white neighborhoods. The District Judge's opinion discusses pertinent authorities and concludes that the Fourteenth Amendment did not command compulsory integration of all of the schools regardless of an honestly composed unitary neighborhood system and a freedom of choice plan. We agree with his conclusion. We have so recently expressed our like view in *Tina Deal, et al.* v. *The Cincinnati Board of Education,* 369 F(2) 55 (CA 6, 1966), petition for cert. filed, 35 LW 3394 (U.S. May 5, 1967) (No. 1358), that we will not here repeat Chief Judge Weick's careful exposition of the relevant law of this and other circuits. He concluded "We read *Brown* as prohibiting only enforced segregation." 369 F(2) at 60. We are at once aware that we were there dealing with the Cincinnati schools which had been desegregated long before *Brown,* whereas we consider here Tennessee schools desegregated only after and in obedience to *Brown.* We are not persuaded, however, that we should devise a mathematical rule that will impose a differeht and more stringent duty upon states which, prior to *Brown,* maintained a de jure biracial school system, than upon those in which the racial imbalance in its schools has come about from so-called de facto segregation—this to

be true even though the current problem be the same in each state.

We are asked to follow *United States* v. *Jefferson County Board of Education*, 372 F(2) 836 (CA 5, 1966), which seems to hold that the pre-*Brown* biracial states must obey a different rule than those which desegregated earlier or never did segregate. This decision decrees a dramatic writ calling for mandatory and immediate integration. In so doing, it distinguished *Bell* v. *School City of Gary, Indiana*, 324 F(2) 209 (CA 7, 1963), *cert. den.* 377 U.S. 924, on the ground that no pre-*Brown* de jure segregation had existed in the City of Gary, Indiana. 372 F(2) at 873. It would probably find like distinction in our *Tina Deal* decision because of *Cincinnati's* long ago desegregation of its schools. We, however, have applied the rule of *Tina Deal* to the schools of Tennessee. In *Mapp* v. *Board of Education*, 373 F(2) 75, 78 (CA 6, 1967) Judge Weick said,

> "To the extent that plaintiffs' contention is based on the assumption that the School Board is under a constitutional duty to balance the races in the school system in conformity with some mathematical formula, it is in conflict with our recent decision in *Deal* v. *Cincinnati Board of Education*, 369 F(2) 55 (6th Cir. 1966)."

However ugly and evil the biracial school systems appear in contemporary thinking, they were, as *Jefferson, supra,* concedes, de jure and were once found lawful in *Plessy* v. *Ferguson*, 163 U.S. 537 (1896), and such was the law for 58 years thereafter. To apply a disparate rule because these early systems are now forbidden by *Brown* would be in the

nature of imposing a judicial Bill of Attainder. Such proscriptions are forbidden to the legislatures of the states and the nation—U.S. Const. Art. I, Section 9, Clause 3 and Section 10, Clause 1. Neither, in our view, would such decrees comport with our current views of equal treatment before the law.

This is not to say that Tennessee school authorities can dishonestly construct or deliberately contrive a system for the purpose of perpetuating a "maximum amount" of its pre-*Brown* segregation. *Northcross* v. *Board of Education of City of Memphis*, 33 F(2) 661, 664 (CA 6, 1964). But to the extent that *United States* v. *Jefferson County Board of Education*, and the decisions reviewed therein, are factually analogous and express a rule of law contrary to our view herein and in *Deal*, we respectfully decline to follow them.

2) *Gerrymandering.*

Appellants assert that while giving surface obedience to the establishment of a unitary zoning system and freedom of choice, the school officials of the City of Jackson had been guilty of "gerrymandering", in order "to preserve a maximum amount of segregation." Were this true, it would be violative of the law. *Northcross* v. *Board of Education of City of Memphis*, 302 F(2) 818, 823, (CA 6, 1962), *cert. den.* 370 U.S. 944, and *Northcross* v. *Board of Education of City of Memphis*, 333 F(2) 661, 664 (CA 6, 1964). The District Judge in the instant matter did hold that as to some boundary lines "there appears to be gerrymandering." *Monroe* v. *Board of Commissioners, City of Jackson, supra*, 244 F. Supp. at 361. As to these instances, he ordered changes in the school zone lines. *Id.* at 361, 362. But, as to the junior high schools, he concluded,

"that the proposed junior high school zones proposed by defendants do not amount to gerrymandering." 244 F. Supp. at 362.

Without making our own recitation of the relevant evidence, we express our agreement with the District Judge.

3) ***Faculty desegregation.***

In the accomplishment of desegregation in the involved schools, there remain some that are attended only by Negro and others only by white children. The teaching staff conforms substantially to this pattern—all Negro teachers in the all Negro schools and all white teachers in the all white schools. Little attention was paid to the teaching staff in the early desegregation cases. *Brown* v. *Board of Education, supra*, did not speak on it, nor did the early relevant decisions from this circuit. In *Mapp* v. *Board of Education of Chattanooga*, 319 F(2) 571, 576 (CA 6, 1963), however, we ordered restored to the complaint there involved allegations and prayers for relief relating to assignment of teachers and principals, but ordered also that "decision of the legal question presented await development of the progress of the plan approved." 319 F(2) at 576. And we further concluded that "within his discretion, the District Judge may determine when, if at all, it becomes necessary to give consideration to the question. . . ." *Ibid.*

This leisurely postponement of consideration of faculty desegregation appealed to the Fourth Circuit, when in *Bradley* v. *School Board of City of Richmond, Virginia*, 345 F(2) 310, 320, 321 (CA 4, 1965), it said:

"The possible relation of a reassignment of teachers to protection of the constitutional rights of pupils need

not be determined when it is speculative. When all direct discrimination in the assignment of pupils has been eliminated, assignment of teachers may be expected to follow the racial patterns established in the schools. An earlier judicial requirement of general reassignment of all teaching and administrative personnel need not be considered until the possible detrimental effects of such an order upon the administration of the schools and the efficiency of their staffs can be appraised along with the need for such an order in aid of protection of the constitutional rights of pupils."

But the Supreme Court declared this would not do, and in *Bradley* v. *School Board*, 382 U.S. 103 (1965), remanded the case to require the Richmond School Board to proceed with study and resolution of the faculty integration question, stating,

"There is no merit to the suggestion that the relation between faculty allocation on an alleged racial basis and the adequacy of the desegration plans is entirely speculative." 382 U.S. at 105.

The *Bradley* opinion was followed by *Rogers* v. *Paul, et al*, 382 U.S. 198 (1965); once again the Supreme Court remanded the cause for consideration of the faculty desegregation problem.

The District Judge in the matter now before us did hear some evidence on the question of faculty desegregation and concluded,

"We do not believe that the proof of the plaintiffs is sufficiently strong to entitle them to an order requiring,

integration of the faculties and principals." 233 F. Supp. at 364.

He did, however, attack a then current policy of the school authorities whereby white teachers and Negro teachers, "simply because of their race," were respectively assigned only to schools whose pupils were all or predominantly of that teacher's race. The order implementing his decision contained the following:

"The application of plaintiffs for an order requiring integration of faculty is at this time denied. However, the policy of defendants of assigning white teachers only to schools in which the pupils are all or predominantly white and Negro teachers only to schools in which the pupils are all Negro is by this order rescinded to the extent that white teachers, who so desire, will not be barred from teaching in schools in which the pupils are all or predominantly Negro, and Negro teachers, who so desire, will not be barred from teaching in schools in which the pupils are all or predominantly white.

To implement this change in policy, defendants must forthwith, as to substitute teachers, and each year beginning with the year 1966-67, as to all teachers, publicize it and obtain from each teacher an indication of willingness or an indication of objection to teaching in a school in which the pupils are all or predominantly of the other race. All teachers who indicate such a willingness will be assigned to schools without consideration of the race of the teacher or the pupils, but all other usual factors may be considered in assigning

teachers. Nothing in this order, however, will be construed as requiring the assignment of an objecting teacher to a school in which the pupils are all or predominantly of the other race or will be construed as requiring a refusal to employ or a dismissal of a teacher who objects to teaching in such a school. This change in policy will be effective as to substitute teachers during the remainder of the school year 1965-66 and as to all teachers beginning with the school year 1966-67."

We note that this order was handed down before *Bradley* v. *School Bd., supra,* and we are constrained to hold that it does not commit or require the school authorities to adopt an adequate program of faculty desegregation which will pass muster under the implied command of the *Bradley* case. Whatever *Bradley's* clear language, we cannot read it otherwise than as forbidding laissez faire handling of faculty desegregation. It implies that the accomplishment of that goal cannot be left to the free choice of the teachers and that the Board must exercise its authority in making faculty assignments so as to assist in bringing to fruition the predicted benefits of school desegregation.

No Supreme Court decision, however, has as yet provided a blue print that will achieve faculty desegregation. The United States Office of Education has indicated that, in some affirmative way, school boards must act to correct past discriminatory practices in the assignment of teachers.[2] But its recommendations do not have the force of

[2] "§181.13 Faculty and Staff

(a) *Desegregation of Staff.* The racial composition of the professional staff of a school system, and of the schools in the system, must be considered in determining whether students are subjected to discrimination in educational programs. Each school system is responsible for correcting

law; neither does it provide clear guidelines to make easy the job of school boards in dealing with this problem. It will be difficult to eliminate the forcing of people into places and positions because of race and at the same time compulsorily assign a school teacher on the basis of his or her race.

It is sufficient for us to say now that the formula announced by the District Judge, leaving the decision of integration of the faculties to the voluntary choice of the

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the effects of all past discriminatory practices in the assignment of teachers and other professional staff.

(b) *New assignments.* Race, color, or national origin may not be a factor in the hiring or assignment to schools or within schools of teachers and other professional staff, including student teachers and staff serving two or more schools, except to correct the effects of past discriminatory assignments.

• • •

(d) *Past assignments.* The pattern of assignment of teachers and other professional staff among the various schools of a system may not be such that schools are identifiable as intended for students of a particular race, color, or national origin, or such that teachers or other professional staff of a particular race are concentrated in those schools where all, or the majority, of the students are of that race. Each school system has a positive duty to make staff assignments and reassignments necessary to eliminate past discriminatory assignment patterns. Staff desegregation for the 1966-67 school year must include significant progress beyond what was accomplished for the 1965-66 school year in the desegregation of teachers assigned to schools on a regular full-time basis. Patterns of staff assignment to initiate staff desegregation might include, for example: (1) Some desegregation of professional staff in each school in the system, (2) the assignment of a significant portion of the professional staff of each race to particular schools in the system where their race is a minority and where special staff training programs are established to help with the process of staff desegregation, (3) the assignment of a significant portion of the staff on a desegregated basis to those schools in which the student body is desegregated, (4) the reassignment of the staff, of schools being closed to other schools in the system where their race is a minority, or (5) an alternative pattern of assignment which will make comparable progress in bringing about staff desegregation successfully."

teachers, does not obey current judicial commands. We, therefore, remand this phase of the litigation to the District Judge to reconsider upon a further evidentiary hearing the matter of faculty desegregation.

4) *Desegregation of Teachers Organisations.*

It appears that at the time of the hearing in the District Court there existed in Tennessee two voluntary organizations, the Tennessee Education Association, whose membership was confined to white teachers, and the Tennessee Education Congress, made up of Negro teachers. Traditionally, the School Board allowed separate holidays to permit the members of these organizations to attend so-called "teacher in-training" programs. The District Judge dealt with this subject as follows:

> "Plaintiffs also seek an order prohibiting segregation of teacher in-service training. Although the proof is not completely clear, it appears that the only such segregation that remains results from the fact that the white teachers and the Negro teachers are members of separate professional organizations. It appears without dispute that defendants do not control the policies of these organizations. In any event, as heretofore indicated, the Mapp case, supra, holds that plaintiffs have no standing to assert any constitutional claims that the teachers may have and may assert a claim for teacher desegregation only in support of their constitutional right, as pupils, to an abolition of discrimination based on race. The assertion by plaintiffs that what remains of segregation in teacher in-service training has an effect on their right as pupils is, on the proof in this

case extremely tenuous. We deny this application for relief." 244 F. Supp. at 365.

The evidence on this subject is too meager to permit us to evaluate the extent to which the school authorities participated in or aided the activities of these separate teacher organizations, and the degree to which membership by the teachers in them would, in turn, affect the rights of the pupils. It appears, however, that these in-service training programs for teachers are conducted pursuant to state law, and are financed with public funds.[3] We make clear that the plaintiff pupils do have standing to assert that the existence of separate teacher organizations based on race and the school authorities' cooperation with their separated activities such as the in-training program "impairs the students' rights to an education free from any consideration of race." *Mapp* v. *Board, supra,* 319 F(2) at 576. If the District Judge's above quoted language can be read as a contrary holding, it is error. We also remand this issue to the District Judge for further consideration.

5) ***The Jackson Symphony Orchestra.***

It appeared that the Jackson Symphony Association, with permission of the school authorities, arranged for a program by the Jackson Symphony Orchestra at one of the Jackson schools. The ladies in charge of this event invited the children in several grades of the Jackson City Schools, the County schools, and the Catholic schools. Those students included some from the all-white schools, and some from the schools, public and parochial, containing both

[3] See e.g., Chap. 76 Tenn. Public Acts, 1965, Sec. 24.

Negro and white students. Students in all-Negro schools were not invited for the two performances involved. Testimony by one of the ladies of the Symphony Association denied any discriminatory motivation in the selection of the pupils, suggesting that the capacity of the auditorium was exhausted by those invited and in attendance. She said,

> "If we had room, we would have had every child in town there—fourth, fifth and sixth grades of every school, but we didn't have room."

The school authorities had nothing to do with the matter of who was to be chosen to attend the concert. Its only participation was to allow the use of the auditorium. While it would be impermissible for school authorities to allow use of school facilities for entertainment that was discriminatory, nothing was developed by the evidence to cause us to criticize the District Judge's conclusion that the "defendants were not motivated by racial considerations" in their handling of this matter. *Monroe* v. *Board of Commissioners, supra,* 244 F. Supp. at 365.

Another issue discussed by the District Judge, —— F. Supp. at ——, the so-called "split season," has been rendered moot by the elimination of the practice.

The cause is remanded to the District Judge for further consideration of the matter of faculty desegregation and teacher in-service training, and is otherwise affirmed.

Judgment of the United States Court of Appeals for the Sixth Circuit

(filed July 21, 1967)

No. 17,118

BRENDA KAY MONROE, *et al.*,

Plaintiffs-Appellants,

—vs.—

BOARD OF COMMISSIONERS OF THE CITY OF JACKSON, TENNESSEE, ITS BOARD MEMBERS, and C. J. HUCKABA, SUPERINTENDENT OF CITY SCHOOLS,

Defendants-Appellees.

Before:

O'SULLIVAN, PHILLIPS and PECK,

Circuit Judges.

JUDGMENT

APPEAL from the United States District Court for the Western District of Tennessee.

THIS CAUSE came on to be heard on the record from the United States District Court for the Western District of Tennessee and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that this cause be and the same is hereby remanded to the District Judge for further consideration of the matter of faculty desegregation and teacher in-service training, and is otherwise affirmed.

No costs on appeal awarded either party.

Entered by order of the Court.

/s/ CARL W. REUSS
Clerk

A True Copy.

Order of the United States Supreme Court Granting Petition for Writ of Certiorari

(filed January 15, 1968)

No. 740, *Monroe, et al.* v. *Bd. of Comm'rs of City of Jackson, Tenn., et al.*

The petition for a writ of certiorari is granted. The case is placed on the summary calendar and set for oral argument immediately following No. 695.

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IN THE

Supreme Court of the United States

October Term, 1967

No. 740

BRENDA K. MONROE, *et al.*,

Petitioners,

—v.—

BOARD OF COMMISSIONERS OF THE CITY OF JACKSON, TENNESSEE, *et al.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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BOARD OF COMMISSIONERS OF THE CITY OF JACKSON, TENNESSEE, *et al.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above-entitled case on July 21, 1967.

Citations to Opinions Below

The district court's opinion is reported at 244 F. Supp. 353, and is reprinted in the Appendix hereto, *infra*, pp. 1b-32b. The opinion of the Court of Appeals is unreported and is printed in the Appendix hereto, *infra*, pp. 33b-46b. An earlier district court opinion in this case is reported at 221 F. Supp. 968.

Jurisdiction

The judgment of the Court of Appeals was entered July 21, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1).

Question Presented

Whether the courts below should have required the school board to adopt a desegregation plan which would abolish the dual school system and eliminate the identifiable Negro school.

Constitutional and Statutory Provisions Involved

This case involves Section 1 of the Fourteenth Amendment to the Constitution of the United States, and 42 U.S.C. Section 1983 providing a right of relief in equity for violations of constitutional rights.

Statement[1]

This class action was filed January 8, 1963 by Negro students against the Board of Commissioners of the City of Jackson, Tennessee, which administers the city school system. The original complaint, asserting rights secured by the Fourteenth Amendment, sought injunctive relief against the continued operation of a compulsory segregated school system, and an order requiring the city to

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[1] The page citations in this Statement are to the original page numbers in Volumes I-IV of the typed transcript of testimony at the district court hearings of May 28 and June 18, 1965, which have been filed as part of the certified original record by the Clerk of the Court of Appeals for the Sixth Circuit.

present a plan for reorganization into a unitary nonracial system. In due course, the Board of Commissioners came forward with a proposed plan of gradual desegregation which was modified as to timetable and approved by the district court. See 221 F. Supp. 968 (W.D. Tenn., 1963).

After the elementary school desegregation plan had operated for two years, and proposed desegregated junior high school zones had been announced, plaintiffs filed a Motion for Further Relief (9/4/64), Specification of Objections to Junior High School Zones (11/30/64), and an Additional Motion for Further Relief (4/19/65), alleging generally that the Board's zoning, transfer, and faculty assignment policies were designed to perpetuate segregation to the maximum extent possible. The district court held hearing on these motions and objections on May 28, 1965 and June 18, 1965. The Superintendent of Schools testified and plaintiffs presented expert testimony of three educational administrators, Dr. Roger W. Bardwell, Superintendent of Schools of Elk Grove Township, Illinois; Merle G. Herman, Assistant Superintendent of Schools of Villa Park, Illinois; and Dr. Eugene Weinstein, Professor of Sociology, Vanderbilt University, Nashville, Tennessee.[2]

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[2] Dr. Bardwell's qualifications included B.S., M.S., and Ph.D. degrees from the University of Wisconsin in public school administration, fifteen years' experience in school administration generally, and substantial experience in school building planning and zoning. The Elk Grove school district of which he had been superintendent for five years was of approximately the same size as the Jackson city school system (T. 136-138). Mr. Herman's educational qualifications included a B.A. from McKendree College, and an M.A. and completion of most doctoral requirements at Washington University in St. Louis. His experience included three years' public school teaching, seven years' public school administration, and ten years college teaching in the field of education. During the period in which he was a university faculty member, he participated in many school surveys in a number of different states, including zoning problems as part of those surveys. The school system of which he was Assistant Super-

The district court decided that racial gerrymandering was so obvious in the case of some elementary zones that it was required to order some alterations. However, the court ruled that gerrymandering was not obvious enough to allow relief in the case of junior high school zones, in spite of substantial expert testimony to the contrary. The experts had concluded that a school system which intended to desegregate rather than preserve the maximum amount of segregation, would, in accord with standard educational practice, have adopted an entirely different zoning system for junior high schools. The district court, in addition to holding that the Board of Commissioners had no affirmative obligation to re-organize its school system to disestablish segregation of students, held that the board had no obligation to re-assign faculty members to eliminate faculty segregation. See 244 F. Supp. 353 (W.D. Tenn. 1965), Appendix *infra*, pp. 1b-25b.

On appeal the United States Court of Appeals for the Sixth Circuit held that while the district court had erred with regard to faculty segregation, citing *Bradley* v. *School Board of the City of Richmond, Va.*, 382 U.S. 103 (1965), and *Rogers* v. *Paul*, 382 U.S. 198 (1965), it had not erred with regard to students. The Sixth Circuit reaffirmed its traditional view of the nature of the constitutional obligation of desegregation that "we read *Brown* as prohibiting only enforced segregation", and expressly disagreed with and declined to follow the contrary view

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intendent was also of approximately the same size as the Jackon city school system (T. 196-197). Dr. Weinstein's qualifications included a B.A. from the University of Chicago, an M.A. from Indiana University, and a Ph.D. from Northwestern University, all in the areas of sociology and social psychology. His particular field of specialization was child development, and he had conducted studies of the impact of school desegregation on the development and educational attitudes of children and their parents (T. 299-301).

adopted by the United States Court of Appeals for the Fifth Circuit in *United States et al.* v. *Jefferson County Board of Education et al.*, 372 F.2d 836 (5th Cir., 1966), re-affirmed *en banc*, 380 F.2d 385 (5th Cir., 1967). See Appendix, *infra*, pp. 33b-45b. Plaintiffs seek to have reviewed on certiorari the specific ruling on gerrymandering of junior high school zones in the Jackson city school system, which was based on the general legal premise of lack of an affirmative obligation to disestablish segregation of students.

The Jackson City School System and General Policies Perpetuating Segregation

Jackson, Tennessee is a small to medium sized city in mid-western Tennessee, with a school system of approximately 8,000 students, about 40% Negro and 60% white. The system has eight elementary schools, three junior high schools, and two high schools (Pl. Ex. 26). Up until the school year 1961-62, eight of the thirteen schools (5 elementary, 2 junior high, and 1 high school) were exclusively for whites, and the remaining five (3 elementary, 1 junior high, and 1 high school) were designated for Negroes ((Pl. Ex. 26), 221 F. Supp. 968).

At least as early as 1956, leaders of the Jackson Negro community began petitioning the Board of Commissioners to implement this Court's 1954 decision requiring public school desegregation (T. 371-372). They met with total failure for at least five years until the beginning of the 1961-62 school year. Then, pursuant to the Tennessee Pupil Placement Act, the board began accepting individual applications for enrollment of Negro children in white schools. During 1961-62, three Negro students were admitted to white schools under this act, and in the following year (1962-63), four more, for a total of seven (T. 371-372).

In early 1963, this lawsuit was filed. In June, 1963, the district court granted plaintiffs' motion for summary judgment, and ordered the Board of Commissioners to file a plan of desegregation. After proposing a gradual timetable for desegregation grade by grade starting from the lowest grade up, which was modified and then approved by the district court (221 F. Supp. 968), the board began implementation of its alleged plan of desegregation in the elementary schools in 1963.

A new set of zones for the elementary schools was announced which was supposed to be unitary, non-racial, and drawn according to the accepted educational standards of compactness and capacity of buildings. Nevertheless, there were certain departures from these standards. The district court held after the 1965 hearing that racial gerrymandering was so obvious in the case of the boundaries between the white West Jackson and Negro South Jackson Schools, the white Parkview and Negro Washington-Douglass Schools, and the white Alexander and Negro Lincoln Schools that the boundaries had to be re-drawn Appendix, pp. 13b-14b.

Plaintiffs' educational expert Dr. Bardwell testified that in addition to these situations which the district court corrected, the boundaries between other white and Negro zones were drawn to place Negro children living closer to white schools in the Negro zones (T. 152). After inspection of a map of all elementary zones superimposed on a racial residential census of the city, Dr. Bardwell concluded that the zones "follow in many areas the racial complex of the neighborhood, rather than the geography of the situation," and if geography were the main criterion, seven of the eight elementary schools "would be integrated to a much greater degree than they are" (T. 153-155).

Having achieved the maximum possible perpetuation of segregation through school zoning, the defendant school system then adopted a transfer policy to make it possible for students who were unavoidably zoned to a school where their race would be in the minority, to transfer to a school where their race would be in the majority (App. 7b-8b). While the original plan of desegregation approved by the district court in 1963 provided that any transfer policy could be adopted as long as it did not have as its purpose the delay of desegregation, the district court found in 1965 that the school system had administered its ostensibly open transfer policy in the following manner: "They have allowed white pupils as a matter of course to attend schools, outside of their unitary zones, in which white pupils predominate, and have allowed Negro pupils as a matter of course to attend schools, outside of their unitary zones, attended only by Negroes but they have denied Negroes (and specifically intervening plaintiffs) the right to attend predominantly white schools outside of their unitary zones" (T. 346-347, App. 8b). In other words, the Board was using the "minority to majority" transfer policy which had been condemned by this Court in 1963 in *Goss* v. *Board of Education*, 373 U.S. 683 (1963), App. 8b.[3]

After the Board of Commissioners began its plan of ostensible desegregation in 1963, it continued its previous

[3] Other aspects of the system's transfer policy were also administered in accordance with the principle of a segregated dual school system. Plaintiffs' educational expert Mr. Herman testified that the Jackson city school system admitted approximately 400 students from surrounding Madison County (out of approximately 8,000 total students in the city system), and all white students were assigned to schools which were all or predominantly white and all Negro students to schools which were all-Negro, without exception (T. 210-211). Mr. Herman also suggested that county transferees of the same race as the predominant race in any particular school were apparently given priority in assignment over students of a minority race who actually resided in the zone of that school (T. 211).

practice of assigning Negro teachers only to schools whose enrollments had been and remained all-Negro, and white teachers only to the schools which had been previously all-white and remained predominantly white under the desegregation plan in operation (T. 294). As late as the 1964-65 school year, the Board was asserting as the basis of this policy that "the integration of the faculty is not related to nor necessary for the achievement of elimination of compulsory segregation" (53a) and that "the destruction of the entire City School System is seeded in this request [for faculty desegregation] in such fashion as to be beyond the control of defendant officers, not from violence but from student withdrawal" (42a).

The Racial Basis of the Board's Junior High School Attendance Policies and the Educational Expert Panel's Proposed Non-Racial Plan

The district court's approval of the Board of Commissioners' zoning plan for junior high schools, as affirmed by the Court of Appeals, is specifically at issue here. Jackson has three junior high schools: Tigrett, heretofore all-white, is located in the western part of the city; Merry, heretofore and still all-Negro, in the center of the city; and Jackson, heretofore all-white, in the eastern portion (Pl. Ex. 26, App. 14b).

All three junior high schools were constructed in the ten-year period after 1955 during which the Board of Commissioners was operating a segregated school system contrary to this Court's 1954 and 1955 pronouncements in the *Brown* cases (T. 174). The two schools intended for whites were located in the centers of white residential concentration in the western and eastern sections of the city; the single school intended for Negroes was located in the center

of the Negro residential concentration in the central section of the city (T. 201-205).

When the Board of Commissioners was finally forced to announce a plan for the desegregation of the junior high schools in late 1964 under the district court's original 1963 order, it proposed a set of irregularly shaped zones in which the center zone for previously all-Negro Merry Junior High School was shaped roughly like an hour glass (Pl. Ex. 19). In developing these zones, the Superintendent of Schools apparently did not undertake to find out how many junior high school students there were in the city and attempt to match the numbers of students to the capacities of the respective schools, in spite of affirming that he used educational considerations such as capacity of schools in formulating the zones (T. 38-135, 63-65).

After analysis of a racial residential map of the city showing the locations of the residences, and the race, of all students in the school system, plaintiffs' educational expert Merle G. Herman concluded with regard to the junior high school zones: "There seems to be a very distinct tendency for the lines to follow the residences of Negroes and whites —in other words, separating the two. Where there is a large Negro population, there tend to be lines drawn to maintain segregation in the schools that serve those areas" (T. 201).

After the new junior high school zones were announced for the following year in late 1964, and after the school system had discovered from the 1964-65 enrollment figures that all-Negro Merry Junior High School, which then accommodated all Negro junior high school students in the city but one, was three pupils over capacity, the Board of Commissioners decided in the spring of 1965 to construct four additional classrooms at Merry so as to increase its

capacity by 120 (T. 35-36, 99-100). This decision was made despite the facts that (1) *the enrollments of the two previously all-white junior high schools were approximately 300 students under capacity,* and (2) *the elementary school enrollment figures indicated that total junior high enrollment for the system would remain constant at about 100 students above the present enrollment for at least the next four years* (T. 35-36, 215-216).

When asked whether based on his experience no white children could be expected to enroll in Merry Junior High School and would it not therefore remain all-Negro, the Superintendent of Schools said, "Judging on the basis of what has happened up to now, that might be the case. . . . I imagine it will be predominantly Negro" (T. 101-102). He also expected that the small number of Negro students from the other two zones of the heretofore all-white junior high schools would continue coming to Merry, something the Board's transfer policy would encourage (T. 102). The Superintendent attempted to justify the construction of an addition to Merry Junior High by pointing out that all-Negro Merry Senior High School (in the same building), was growing and might need some of the rooms presently used by the junior high school. *But he also admitted that the all-white senior high school (not yet then desegregated) was 249 students under capacity* (T. 103).

In the course of the district court hearing on the proposed junior high zones, plaintiffs' educational expert Mr. Herman explained that the standard basis for drawing junior high school zones was the "feeder" principle. By this, junior high school zones are based on elementary school zones and are composed by clustering several such zones so that all students from the same elementary school go on to attend the same junior high school:

> . . . , the main consideration is to follow ordinarily the elementary school lines so that when elementary schools are then taken and six graders graduating go into junior high schools, then there is an integration of effort between the elementary schools and the junior high schools where orientation procedures might be developed, that is where sixth graders might go into junior high schools and get acquainted with it. The principals are able to work together in enabling a sufficiently easy transition from the elementary to the junior high school. Also from a guidance point of view, it is well that the schools have some associations that are teacher relationships and administrative relationships which should be developed between the feeder schools and the schools into which the children are being enrolled (T. 198-199).

He also explained that geography and compactness were not so important in junior high zoning as in elementary zoning, since junior high students are "old and mature enough to take care of themselves on the streets . . . and, therefore, you don't pay too much attention to the ordinary barriers that you consider at the elementary school level" (T. 199-200). The Superintendent of Schools admitted the desirability of the "feeder" principle in developing junior high school zones (T. 104-105).

When asked whether the Board of Commissioners' junior high school zoning plan violated the "feeder" principle, plaintiffs' educational expert Mr. Herman stated: "Yes, it does, because the lines of the elementary schools are not consistent with the lines which separate the zones of the junior high schools" (T. 203). Mr. Herman concluded that since "it is an accepted fact here, I think, that white children attend white schools and Negro children attend

Negro schools," that even though a completely free transfer system was superimposed on the Board's junior high school zones based on race, "segregation will continue to exist" (T. 206).

As a further check on whether the Board of Commissioners' proposed junior high school zones were drawn with the primary goal of preserving the maximum amount of segregation, rather than according to standard educational practice, plaintiffs' experts undertook to draw junior high school zones for the city of Jackson, as they would for their own school systems. They obtained all of the relevant data necessary for drawing such zones, such as detailed maps of the city, the locations of the elementary and junior high schools, the locations of the residences of all students, the capacities of schools, etc., both from the office of Superintendent of Schools and by utilizing a research assistant at Lane College in Jackson (T. 138-139, 142-145, 171-172, 187-190, 368-370).

The expert panel concluded that by using the accepted "feeder" principle, all of the existing elementary schools in the city were located so that compactly designed zones around them could be conveniently clustered into three zones for the three existing junior high schools in the following manner: (1) Parkview (white), Washington-Douglass (Negro), and Whitehall (white) Elementary School zones would be the zone for Jackson Junior High School; (2) Highland Park (white), West Jackson (white), and South Jackson (Negro) Elementary School zones would be the zone for Tigrett Junior High School; and (3) Alexander (white) and Lincoln (Negro) Elementary School zones would be the zone for Merry Junior High School (T. 209). Each of these elementary schools is located conveniently to its proposed feeder junior high school, and

the capacities of the elementary schools were matched to their respective proposed feeder junior high schools (T. 209). The expert panel assumed that the then existing elementary school zones drawn by the Board of Commissioners would have to be altered to produce greater compactness and reduce racial gerrymandering, as the district court eventually required, in part (T. 208-209, App. 13b). The panel concluded that by drawing the zones in accordance with the "feeder" principle, "the junior high school zones would be developed objectively, without regard to the racial character of the neighborhood" and "from an educational point of view, it would be sound" (T. 209).

The Expert Panel's Analysis of Why the City of Jackson's Schools Will Remain Segregated Unless its Policies are Changed to Disestablish Segregation

All three of plaintiffs' educational experts agreed that the combined effects of the school system's racial zoning policy, segregated faculty assignments, and "minority to majority" and other racially based transfer policies, had preserved almost total segregation, and had in fact fostered segregation after the schools had ostensibly been desegregated. Dr. Roger W. Bardwell pointed out that where the Board had zoned all of the schools in such a way that their enrollments were conspicuously either predominantly white or almost all-Negro, and thus preserved the racial identity of the schools as they were under the dual school system, the availability of the transfer option caused the racial identification of the schools to become even more pronounced by permitting the remaining students of the minority race in each school to transfer out (T. 159-161, 183-184). Dr. Bardwell indicated that where the school system had conferred racial identities on individual schools, it would be expected that substantial numbers of students

would transfer out of those schools because they were of the minority race and this was confirmed by the fact of an abnormally large number of transfers within the system (T. 159-161, 183-184). Merle G. Herman stated that the effect of a transfer system predicated on race superimposed on zones predicated on race would operate "to maintain whatever the attitude structure is of the people who have children in those schools" and where the attitude toward integration was obviously unfavorable because of the large number of minority to majority transfers, "this would totalize segregation" (T. 200-202). Dr. Eugene Weinstein pointed out the cumulative effects of faculty segregation on the racially gerrymandered zoning and minority to majority transfer policies: "First, especially in conjunction with a transfer plan, it tends to continue to stigmatize Negro schools or schools that were formerly Negro schools as Negro, and to make schools which were newly desegregated still be regarded as white schools as part of the generalized conception of the schools themselves" (T. 302). He concluded that "faculty segregation tends to make additional impetus to transfer out of a Negro school. because it is obvious that it is Negro in all of its educational environs and it tends to stigmatize a school as a Negro school" (T. 315). Dr. Bardwell and Mr. Herman both concurred in Dr. Weinstein's conclusion (T. 160, 201).

REASONS FOR GRANTING THE WRIT

I.

Introduction—The Importance of the Case.

This case raises a fundamental issue concerning the implementation by the lower federal courts of this Court's decision in *Brown* v. *Board of Education,* 347 U.S. 483; 349 U.S. 294, requiring desegregation of the public schools where there has been compulsory legal segregation. The issue is whether a city school system which utilizes all the discretion available in locating buildings, and determining attendance zoning and student transfer policies, to perpetuate and increase racial segregation in the period following the *Brown* decisions, should be held to have met its obligations to desegregate simply because it has also permitted a small number of Negro students to attend previously all-white schools.

The City of Jackson's combination zoning and transfer plan is one of the two common types of desegregation plans utilized in the South, especially in city school systems. The other is the "freedom of choice" type plan. See petition now pending in *Green* v. *County School Board of New Kent Co., Virginia,* No. 695, October Term 1967. Both types of desegregation plan achieve the common result of keeping previously all-Negro schools all-Negro; the only integration which occurs comes from a small proportion of Negro students attending predominantly white schools.

Although the proportion of Negroes in all-Negro schools has declined since the 1954 decision of this Court in *Brown,* more Negro children are now attending such schools than

in 1954.[4] Indeed, during the 1966-67 school year, a full 12 years after *Brown*, more than 90% of the almost 3 million Negro pupils in the 11 Southern states still attended schools which were over 95% Negro and 83.1% were in schools which were 100% Negro.[5] And, in the case before the Court, over 85% of the Negro pupils in the system still attend schools with only Negroes.[6] Thus, "this June, the vast majority of Negro children in the South who entered the first grade in 1955, the year after the *Brown* decision, were graduated from high school without ever attending a single class with a single white student."[7] And, as the Fifth Circuit has had occasion to say, "for all but a handful of Negro members of the High School Class of 1966, this right [to a racially non-discriminatory public school system] has been of such stuff as dreams are made on."[8] It is clear then, that the desegregation process ordered by the first *Brown* decision has met with unforeseen obstacles, and that further consideration of the problem of remedy originally considered in the second *Brown* decision is in order.

The issue of this case of a systematic evasion of the constitutional obligation to desegregate is raised more particularly by a fact situation in which a board of education (1) maintained a completely compulsorily segregated sys-

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[4] *Southern School Desegregation, 1966-67*, a Report of the U.S. Commission on Civil Rights, July, 1967 at p. 11.

[5] *Id.* at 165.

[6] State of Tennessee, Department of Education, Equal Educational Opportunities Program, *Fall 1966 Desegregation Report on Tennessee's Public Elementary and Secondary Schools* (compiled from reports to the U.S. Office of Education).

[7] *Southern School Desegregation, 1966-67*, at p. 147.

[8] *United States et al.* v. *Jefferson County Board of Education, et al.*, 372 F.2d 836, 845 (5th Cir., 1966) *re-affirmed en banc*, 380 F.2d 385 (5th Cir., 1967).

tem after Brown until this lawsuit was filed in 1963, (2) undertook the constructon of three compulsorily segregated junior high schools during the period after *Brown* which were located in the centers of racially segregated residential concentrations of the city, (3) at the start of the junior high desegregation plan in 1965 zoned those schools in such a way as to follow the patterns of racial residential segregation to the maximum extent possible, (4) provided a transfer provision by which students of the minority race (white or Negro) who were unavoidably zoned to a school in which they would be in a racial minority were encouraged to transfer to a school in which they would be in a racial majority, and (5) upon determining that the single all-Negro junior high school was not of sufficient capacity to accommodate all the Negro junior high students in the city undertook to construct additional capacity at that school while there was still substantial excess capacity at the two all-white junior high schools.

The result has been, and remains that the previously all-Negro junior high school remains an all-Negro junior high school, and that there is a very small proportion of Negro students attending the previously all-white and still overwhelmingly white junior high schools. (The three previously all-Negro elementary schools and the previously all-Negro senior high school—not directly in issue in this petition—also remain all-Negro under the same policies).[9]

There is a natural reluctance on the part of an appellate court to consider the details of administration of a school system and the complexities of desegregation in any particular district. For this reason, perhaps, this Court has considered few school cases since 1954, and those all in one form or another raised the question of the survival of the

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[9] *Tennessee Fall 1966 Desegregation Report, supra.*

desegregation process itself. Now that the pattern of resistance has shifted decidedly from absolute defiance to evasion, the urgent question is whether a board may adopt a course which perpetuates segregation for the overwhelming majority of Negro students, while paying lip service to the obligation to desegregate. This question of necessity requires consideration of the details of a particular system's operation, for only in this manner can the principle of school desegregation become the practice of disestablishment of segregation.

This case provides an especially appropriate vehicle to consider the general problem of evasion of the obligation to desegregate. The record presents a comprehensive analysis of the issues by a panel of educational administrators who served as expert witnesses. In particular, the panel conducted an extensive survey of the zoning problem in the Jackson school system just as they would have if they were drawing zones for their own systems. They then proceeded to actually design a model zoning plan for the Jackson junior high schools based on standard and accepted educational principles. The fact that this zoning plan would completely integrate the three junior high schools in Jackson is the most convincing possible support for their general conclusion that the zones actually devised by the Jackson school system were designed to preserve the maximum possible degree of segregation rather than according to the asserted non-racial educational considerations.

II.

The Sixth Circuit Applied an Erroneous Standard in Deciding this Case, Which is Inconsistent with Decisions of this Court.

When confronted with the facts of this case of the racially oriented process by which the school board created the junior high zones and the end result of almost completely segregated junior high schools, the Sixth Circuit in its opinion under a heading entitled "Compulsory Integration" stated that petitioners were apparently asking them to require school authorities to take "affirmative" steps to eradicate the existing pattern of racial segregation in the schools. While indicating that they recognized that they were in fact dealing with Tennessee schools which had been legally and compulsorily segregated prior to *Brown* and to which the *Brown* decisions perforce applied, the Sixth Circuit held:

> We are not persuaded, however, that we should devise a mathematical rule that will impose a different and more stringent duty upon states which, prior to *Brown*, maintained a de jure biracial school system, than upon those in which the racial imbalance in its schools has come about from so-called de facto segregation. Appendix, *infra*, p. 35b.

In spite of petitioners claim that the City of Jackson's school system had not yet been desegregated according to the requirements of the first *Brown* decision, and that they were therefore invoking the equitable obligation of the second *Brown* decision to desegregate, the Sixth Circuit suggested that petitioners were really seeking to impose a "Bill of Attainder" (!) on the State of Tennessee:

> To apply a disparate rule because these early systems [segregated systems] are now forbidden by *Brown* would be in the nature of imposing a judicial Bill of Attainder. Such proscriptions are forbidden to the legislatures and the states of the nation—U.S. Const. Art. I, Section 9, Clause 3 and Section 10, Clause 1. Appendix, *infra*, pp. 36b-37b.

By its reference to the fact that biracial school systems "were once found lawful in *Plessy* v. *Ferguson*, 163 U.S. 537 (1896), and such was the law for 58 years thereafter," Appendix, *infra*, p. 36b, the Sixth Circuit indicated rather clearly that it regards the patterns, practices, and traditions which were evolved by those biracial school systems as still having substantial legitimacy, and, in effect, that *Plessy* v. *Ferguson* remains influential in construing the extent of the obligation to desegregate enunciated by the second *Brown* decision.

The Sixth Circuit held that "We read *Brown* as prohibiting only enforced segregation," and that no relief was justified since it was now theoretically possible for individual Negro students to attend previously all-white schools in Jackson. Appendix, *infra*, p. 35b. It thus re-affirmed its limited view of the constitutional obligation of desegregation earlier enunciated in *Kelley* v. *Board of Education of the City of Nashville, Tenn.*, 270 F.2d 209 (6th Cir., 1959), *cert. den.* 361 U.S. 924 and adhered to consistently since that time:

> It [the Supreme Court] has not decided that the federal courts are to take over or regulate the public schools of the states. It has not decided that the states must mix persons of different races in the schools .... The Constitution, in other words, does not require integration. It merely forbids discrimination. 270 F.2d at 226.

Based on this view, the Sixth Circuit had held in *Kelley* that a "minority to majority" transfer policy which permitted any child zoned to a school in which his race was in the minority to obtain a transfer to a school in which his race was in the majority, was not in violation of the Fourteenth Amendment since "there is no evidene before us that the transfer plan is an evasive scheme for segregation." 270 F.2d at 229. But see *Goss* v. *Board of Education of the City of Knoxville, Tenn.*, 373 U.S. 683 (1963) which repudiated *Kelley* and, we submit, the legal philosophy on which it rested—which persists in this case. See also *Mapp* v. *Board of Education of the City of Chattanooga, Tennessee*, 373 F.2d 75 (6th Cir. 1967).

There is nothing in this Court's decisions on school desegregation which supports the Sixth Circuit's view on the facts of this case that the constitutional obligation of the Fourteenth Amendment is satisfied by allowing a few Negro students to attend formerly all-white schools, while all of the building location, zoning, and transfer policies of the school system are manipulated in such a way as to keep as many Negro students as possible in all-Negro schools. There is also nothing in this Court's decisions on school desegregation which supports the Sixth Circuit's view of the legal standard set by the second *Brown* decision as involving no affirmative obligation to re-organize the biracial school system to eliminate the practice of segregation.

This Court held from the beginning that the constitutional ban on segregation in public education required far reaching affirmative action in completely re-organizing the entire school system to eliminate the practice. In the second *Brown* decision, 349 U.S. 294 (1955), it said:

> At stake is the personal interest of plaintiffs in admission to public schools as soon as practicable on a

> nondiseriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision. 349 U.S. at 300.

This Court indicated the nature of the obstacles to be overcome in the second *Brown* decision by its direction to the courts supervising the re-organization of the school systems to "consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems." 349 U.S. at 300-301. This direction, combined with the "deliberate speed" proviso, indicates that a thorough and complete re-organization of the segregated school systems was envisioned.

In *Cooper* v. *Aaron*, 358 U.S. 1 (1958), this Court stated that the *Brown* decisions imposed an affirmative obligation on school officials of segregated dual school systems to disestablish segregation:

> State authorities were thus duty bound to devote every effort toward initiating desegregation and bringing about the elimination of racial discrimination in the public school system. 358 U.S. at 7.

Although *Cooper* itself was a case of clear and direct defiance by state officials, this Court looked forward to a time when attempts to perpetuate segregation in public education might become more subtle, when it said that the constitutional rights involved "can neither be nullified

openly and directly by state legislators or state executive or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted 'ingeniously or ingenuously.'" 358 U.S. at 17.

Recently, in *Rogers* v. *Paul*, 382 U.S. 198 (1965), this Court re-affirmed the completeness of the reorganization of the segregated school systems suggested by the enumeration of factors in the second *Brown* decision. It indicated that the provision of transfers for Negro students who so desired to schools with more extensive curricula from which they had been excluded, was something substantially less than it envisioned as an adequate general plan of desegregation.

In the second *Brown* decision, this Court directed that "in fashioning and effectuating the decrees, the courts will be guided by equitable principles." 349 U.S. at 300. The general equity principle is that there is no wrong without a remedy, and therefore equity courts have broad power to provide relief and are obligated to do so. The test of the propriety of measures adopted by such courts is whether the required remedial action reasonably tends to dissipate the effects of the the condemned actions and to prevent their continuance. *Louisiana* v. *United States*, 380 U.S. 145 (1965). An example of the application of this equitable principle is in the antitrust area, where it has been held to require the complete dissolution of large national business enterprises, when there was no other way to counteract the previous effects of illegal monopolization. *United States* v. *Standard Oil Co.*, 221 U.S. 1 (1910); *United States* v. *Bausch & Lomb Optical Co.*, 321 U.S. 707 (1943); *United States* v. *National Lead Co.*, 332 U.S. 319 (1947); *Schine Chain Theatres* v. *United States*, 334 U.S. 110 (1948). Similarly, it has been held to require that fed-

eral courts conduct the redrawing of state legislative districts when there was no other way to counteract the effects of population disparities in existing state legislative districts. *Reynolds* v. *Sims*, 377 U.S. 533 (1964). The Sixth Circuit has clearly not recognized its obligations as a court of equity in supervising the district courts as directed by *Brown II* to fashion a complete remedy for the unconstitutional operation of a compulsory segregated school system, since by no conceivable standard can the effects of the condemned action of establishing a pattern and practice of segregation be said to have been rooted out from the Jackson city school system.

III.

The Sixth Circuit's Decision Conflicts with Recent Major Decisions of the Fifth, Eighth, and Tenth Circuits on the Question of Whether a Previously Segregated School System Must Undertake Affirmative Action to Disestablish Segregation.

While it may be contended that school desegregation cases are all unique because they involve the issue of the extent of equitable relief justified by the facts of the particular case, nevertheless there are general similarities. The Sixth Circuit recognized this and expressly stated that its view was in conflict with the rule recently expressed by the Fifth Circuit on the issue of the extent of the obligation of a previously legally segregated school system to act affirmatively to disestablish that segregation:

> We are asked to follow *United States* v. *Jefferson County Board of Education*, 372 F.2d 836 (5th Cir., 1966), which seems to hold that pre-*Brown biracial* states must obey a different rule than those which desegregated earlier or never did segregate. This de-

> cision decrees a dramatic writ calling for mandatory and immediate integration. In so doing, it distinguished *Bell* v. *School City of Gary, Indiana*, 324 F.2d 209 (7th Cir., 1963), *cert. den.*, 377 U.S. 924, on the ground that no pre-*Brown* de jure segregation had existed in the City of Gary, Indiana. . . .
>
> . . . to the extent that *United States* v. *Jefferson County Board of Education*, and the decisions reviewed therein, are factually analogous and express a rule of law contrary to our view herein and in *Deal*, we respectfully decline to follow them. Appendix, *infra*, pp. 36b-37b.

The Fifth Circuit holds contrary to the Sixth Circuit that affirmative action—such as the rezoning plan offered by petitioners' experts here—must be taken to break up the pattern and practice of segregation which had previously been established: "The two *Brown* decisions . . . compelled seventeen states, which by law had segregated public schools, to take affirmative action to reorganize their schools into a unitary, nonracial system." 372 F.2d at 847. The Court wrote:

> If school officials in any district should find that their district still has segregated faculties and schools or only token integration, their affirmative duty to take corrective action requires them to try an alternative to a freedom of choice plan, such as a geographic attendance plan, a combination of the two, the Princeton plan, or some other acceptable substitute, perhaps aided by an educational park. 372 F.2d at 895-6.

With reference to the Sixth Circuit's view that the legal standard for the extent of the obligation to desegregate is that the Constitution does not require integration, but

merely forbids compulsory segregation, the Fifth Circuit says that "what is wrong about [this view] is that it drains out of *Brown* that decision's signfiicance as a class action to secure equal educational opportunities for Negroes by compelling the states to reorganize their public school systems." 372 F.2d at 865. The court said:

> Segregation is a group phenomenon. . . . Adequate redress therefore calls for much more than allowing a few Negro children to attend formerly white schools; it calls for liquidation of the state's system of de jure school segregation and the organized undoing of the effects of past segregation. 372 F.2d at 866.

The Fifth Circuit contradicts the Sixth Circuit's view that segregation in the South is now just like segregation in the rest of the country:

> . . . the holding in *Brown*, unlike the holding in *Bell* but like the holdings in this circuit, occurred within the context of state-coerced segregation. The similarity of pseudo de facto segregation in the South to actual de facto segregation in the North is more apparent than real. Here school boards, utilizing the dual zoning system, assigned Negro teachers to Negro schools and selected Negro neighborhoods as suitable areas in which to locate Negro schools. Of course the concentration of Negroes increased in the neighborhood of the school. Cause and effect came together. In this circuit, therefore, the location of Negro schools with Negro faculties in Negro neighborhoods and white schools in white neighborhoods cannot be described as an unfortunate fortuity: It came into existence as state action and continues to exist as racial gerrymandering, made possible by the dual system. 372 F.2d at 876.

• • •

> The central vice in a formerly de jure segregated public school system is apartheid by dual zoning: in the past by law, the use of one set of attendance zones for white children and another for Negro children, and the compulsory initial assignment of a Negro to the Negro school in his zone. Dual zoning persists in the continuing operation of Negro schools identified as Negro, historically and because the faculty and students are Negroes. Acceptance of an individual's application for transfer, therefore, may satisfy that particular individual; it will not satisfy the class. The class is all Negro children in a school district attending, by definition, inherently unequal schools and wearing the badge of slavery separation displays. Relief to the class requires school boards to desegregate the school from which a transferee comes as well as the school to which he goes. It requires conversion of the dual zones into a single system. Faculties, facilities, and activities as well as student bodies must be integrated. 372 F.2d at 867-868.

Moreover, the Sixth Circuit's decision necessarily conflicts with the recent decision of the Court of Appeals for the Eighth Circuit in *Kelley* v. *The Altheimer, Arkansas Public School District No. 22,* 378 F.2d 483 (8th Cir., 1967), which specifically rejected the interpretation of the Fourteenth Amendment adhered to by the Sixth Circuit that "the Constitution, in other words, does not require integration. It merely forbids discrimination." 378 F.2d 488. The Eighth Circuit held that there is an affirmative obligation to disestablish segregation:

> We have made it clear that a Board of Education does not satisfy its constitutional obligation to desegregate by simply opening the doors of a formerly all-white school to Negroes. 378 F.2d at 488.

It added that this meant that the board of education must take affirmative steps to change the identities of all-Negro schools into integrated schools, as well as allowing individual Negro students to transfer to formerly all-white schools:

> The appellee School District will not be fully desegregated nor the appellants assured of their rights under the Constitution so long as the Martin School clearly remains identifiable as a Negro school. The requirements of the Fourteenth Amendment are not satisfied by having one segregated and one desegregated school in a District. We are aware that it will be difficult to desegregate the Martin School. However, while the difficulties are perhaps largely traditional in nature, the Board of Education has taken no steps since *Brown* to attempt to change its identity from a racial to a non-racial school 378 F.2d at 490.[10]

Finally, the Sixth Circuit's decision conflicts squarely with that of the Tenth Circuit in *Board of Education of Oklahoma City Public Schools* v. *Dowell et al.*, 375 F.2d 158 (10th Cir., 1967), *cert. den.* 387 U.S. 931. The factual pattern of this City of Jackson case is virtually identical to that with which the Tenth Circuit was confronted in the Oklahoma City case. The one difference was that the Oklahoma City public schools were somewhat further along

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[10] A subsequent decision of the Court of Appeals for the Eighth Circuit, *Raney et al.* v. *The Board of Education of the Gould School District*, 8th Cir., No. 18,527, August 9, 1967, appears to conflict with *Kelley* v. *Altheimer* since the facts of the two cases were very similar. However, there was little discussion of general legal principles of school desegregation in *Raney*, since the Court held that a general attack on the adequacy of the desegregation plan had not been properly made in the district court. *Raney* also seemed to leave open the possibility of eventually requiring a complete re-organization of the school system to disestablish segregation, but at some indefinite time in the future.

in the desegregation process than the City of Jackson. The Oklahoma City school system had announced a formal desegregation plan in 1955, whereas the City of Jackson schools did not take even this initial step until 1961. After zoning its schools in such a way as to preserve the maximum possible segregation without explicit dual zones through following the patterns of racial residential segregation, the Oklahoma City school system then instituted a "minority to majority" transfer plan by which students who were unavoidably zoned to schools where they would be in a racial minority were encouraged to transfer to schools where they would be in a racial majority. Thus, virtually all of the schools in Oklahoma City which had been designated as "white" or "Negro" schools under segregation, remained identified as "white" or "Negro" schools because the student bodies were almost or entirely all-white or all-Negro. The City of Jackson school system did likewise. The Oklahoma City school system continued to assign all-Negro faculties to schools which were all or predominantly Negro in student body, and all-white faculties to schools which were all or predominantly white in student body, thereby reinforcing the identifications of various schools as being intended for Negroes or whites rather than just for students. The City of Jackson school system acted similarly. The Oklahoma City school system located new schools constructed after 1955 in the centers of homogeneous racial residential concentrations, so as to facilitate the perpetuation of segregation through the use of zoning, transfer, and faculty assignment policies. The City of Jackson school system did the same. At the time of the final district court order of relief in the Oklahoma City case in 1965, about 80% of the Negro students in the system still attended schools which were all-Negro or over ninety-five percent Negro in student body. During the last school year (1966-67) in the City of Jackson, over 85% of the Negro

students in the system still attended schools which were one-hundred percent Negro in student body.[11]

Based on these facts, the Tenth Circuit in the *Oklahoma City* case approved a district court finding that "the school children and personnel have in the main from all of the evidence been completely segregated as much as possible under the circumstances rather than integrated as much as possible." 375 F.2d at 161, fn. 2. The Tenth Circuit stated that "inherent in all of the points raised and argued here by [the school board] is the contention that at the time of the filing of this case [1961] there was no racial discrimination in the operation of the school system." 375 F.2d at 164. It responded that this fact situation did constitute a case of legal segregation which had not been disestablished, in spite of the facts that zone lines had been redrawn to eliminate obvious duality in 1955, and that there were some Negro students attending previously all-white schools:

> As we have pointed out, complete and compelled segregation and racial discrimination existed in the Oklahoma City School system at the time the Brown decision became the law of the land. It then became the duty of every school board and school official "to make a prompt and reasonable start toward full compliance" with the first Brown case. It is true the board, in 1955, issued the policy statement and implemented it by the drawing of school attendance lines and inaugurated a "minority to majority" pupil transfer plan. The attendance line boundaries, as pointed out by the trial judge, had the effect in some instances of locking the Negro pupils into totally segregated schools. In other attendance districts which were not totally segregated the operation of the transfer plan naturally

[11] *Tennessee Fall 1966 Desegregation Report, supra.*

led to a higher percentage of segregation in those schools. 375 F.2d at 165.

The Tenth Circuit then held in *Oklahoma City* that "under the factual situation here we have no hesitancy in sustaining the trial court's authority to compel the board to take specific action in compliance with the decree of the court so long as such compelled action can be said to be necessary for the elimination of the unconstitutional evils pointed out in the court's decree." 375 F.2d at 166. Included in the action required to eliminate the effects of previous unconstitutional segregation was an order pairing six-year secondary schools so that three grades of each school were consolidated in one school and three grades in the other school, thereby completely integrating each school in the pair. This clearly required a school board to take affirmative action to disestablish the pattern and practice of segregation preserved through the use of a zoning plan; it necessarily is in conflict with the Sixth Circuit's decision in this City of Jackson case which labels such affirmative action as "compulsory integration" and a "judicial Bill of Attainder." Judge Lewis concurring in the *Oklahoma City* case explained the Tenth Circuit's view that since compulsion was used to maintain the system of segregation, the compulsion inherent in school assignment policies may properly be used to disestablish segregation:

> I have no quarrel with the statement that forced integration when viewed as an end in itself is not a compulsion of the Fourteenth Amendment. But any claimed right to disassociation in the public schools must fail and fall. If desegregation of the races is to be accomplished in the public schools, forced association must result, not as the end sought but as the path to elimination of discrimination. And, to me,

the argument that racial discrimination cannot be eliminated through factors of judicial consideration that are based upon race itself is completely self-denying. The problem arose through consideration of race; it may now be approached through similar but enlightened consideration.

The correctness of the Sixth Circuit's differing standard for reviewing desegregation plans merits the attention of this Court.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX

Memorandum Decision of the United States District Court for the Western District of Tennessee

(filed July 30, 1965)

[Caption Omitted]

Plaintiffs have filed motions for additional relief, which raise these issues:

1. Whether the assignment and transfer plan and policies as actually carried out by the defendants violate plaintiffs' constitutional rights, and if so, to what extent must the plan or policies be amended;

2. Whether the amended unitary zones for elementary schools and the proposed unitary zones for junior high schools are gerrymandered to maximize segregation and thereby violate plaintiffs' constitutional rights;

3. Whether the plan for gradual desegregation heretofore approved by the court, viewed as of now, meets the constitutional standard of "all deliberate speed";

4. Whether plaintiffs are entitled, under the Constitution, to an order requiring the desegregation of faculty, administrative and supporting personnel, and faculty in-service training programs;

5. Whether plaintiffs are entitled, under the Constitution, to an order prohibiting segregation in curricular and extra-curricular activities;

6. Whether plaintiffs are entitled to recover attorneys fees incurred in connection with these motions.

We will dispose of these issues in the order in which they are set out above.

Memorandum Decision

At the outset it should be noted, as we have indicated, that plaintiffs are asserting Fourteenth Amendment rights alone, and are asserting no rights under any Act of Congress.

In dealing with the multifarious issues that may be presented in school desegregation cases, there frequently is difficulty in deciding a particular issue even if the applicable principle of law has been fairly well crystalized. This is especially true in this field because, even though so crystalized, an applicable principle is of necessity a general principle which must be applied to myriad factual situations. More difficulty is encountered, however, when an underlying general principle has not yet become clear. An example of this is the lack of complete clarity as to whether the Constitution requires only an abolition of compulsory segregation based on race or requires something more. This general question must first be answered before we can deal with the assignment and transfer issue and the gerrymandering issue.

This court has heretofore considered the question as to whether the Constitution requires only an abolition of compulsory segregation based on race. *Vick, et al.* v. *Board of Education of Obion County, Tennessee,* 205 F. Supp. 436 (W.D. Tenn. 1962); *Monroe, et al.* v. *City of Jackson, Tennessee,* 221 F.Supp. 963 (W.D. Tenn. 1963); and *Monroe, et al.* v. *Madison County, Tennessee,* 229 F. Supp. 580, (W.D. Tenn. 1964). The latter two opinions were rendered at earlier stages of the separate proceedings in this action. We concluded in these opinions that abolition of segregatio nbased on race is all that the Constitution requires. We based this conclusion not only on our interpretation of the second *Brown opinion* (349 U.S. 294 (1954)) and *Cooper* v. *Aaron,* 358 U.S. 1 (1958), but also on the now famous specific statement to that effect

in *Briggs* v. *Elliott,* 132 F.Supp. 776 (E.D. S.C. 1955), which was a *per curiam* opinion by three-judge court presided over by Judge Parker of the Court of Appeals for the Fourth Circuit. However, plaintiffs again earnestly contend that the Constitution requires an integrated education, and so we have taken this occasion again to review the law.

We find that the following opinions, among others, cite and approve the statement in *Briggs* v. *Elliott, supra,* to the effect that the Constitution requires only an abolition of compulsory segregation based on race: *Kelley* v. *Boar dof Education of Nashville,* 270 F.2d 209, 226 (6th Cir. 1959); *Bell et al.* v. *School City of Cary,* 324 F.2d 209, 213 (7th Cir. 1963); *Griffin* v. *Board of Supervisors of Prince Edward County,* 322 F.2d 332, 336 (4th Cir. 1963); *Dillard* v. *School Board of City of Charlottesville,* 308 F.2d 920, dissent at p. 926, (4th Cir. 1962); *Boson* v. *Rippy,* 285 F.2d 43, 48 (5th Cir. 1960); *Avery* v. *Wichita Falls Independent School Dist.,* 261 F.2d 230, 233 (5th Cir. 1957); *Armstrong* v. *Board of Education of Birmingham,* 323 F.2d 333, dissent at p. 346 (5th Cir. 1963); *Taylor* v. *Board of Education of New Rochelle,* 294 F.2d 36, dissent at p. 47 (2nd Cir. 1961). It is interesting to note that the Fifth Circuit in a very recent case (*Singleton* v. *Jackson Municipal Separate School Dist.,* —— F.2d ——, decided June 22, 1965), recognizing that it had more than once approved the statement in *Briggs,* said that it now "should be laid to rest" and that ". . . the second *Brown* opinion clearly imposes on public school authorities the duty to provide an integrated school system." There is other authority in support of the view now taken by the Fifth Circuit, but the clear weight of authority in the Courts of Appeal and District Courts sup-

ports the view taken in *Briggs* and, as stated, our Court of Appeals in the *Kelley* case, *supra*, seems to subscribe to the *Briggs* view.

This question as to what the Constitution requires comes into sharper focus in two different contexts: one is a situation in which "honestly" arrived at unitary zones result in *de facto* school segregation because of existing racial housing patterns; the other is a situation in which a voluntary assignment and transfer provision, not based on race, results in the continuance of segregation. In *Northcross et al.* v. *Board of Education of Memphis,* 333 F.2d 661 (6th Cir. 1964) our Court of Appeals recognized that there is no constitutional obligation to draw zone lines to maximize integration. See also, to the same effect, *Downs et al.* v. *Board of Education of Kansas City,* 336 F.2d 988 (10th Cir. 1964), cert. denied 380 U.S. 914 (1965). The Supreme Court has not dealt specifically with the first situation, but it has done so with the second. In *Goss, et al.* v. *Board of Education of City of Knoxville,* 373 U.S. 683 (1963), the Supreme Court struck down transfer provisions which allowed pupils who, under the rezoning, would be required to attend a school in which they would be in a racial minority to transfer to a school in which they would be in a racial majority. In so doing, the Court said at pp. 686-687:

> "It is readily apparent that the transfer system proposed lends itself to tperpetuation of segregation. Indeed, the provisions can work only toward that end. While transfers are available to those who choose to attend school where their race is in the majority, there is no provision whereby a student might transfer upon request to a school in which his race is in a

minority, unless he qualifies for a 'good cause' transfer. As the Superintendent of Davidson County's schools agreed, the effect of the racial transfer plan was 'to erpmit a child [or his parents] to choose segregation outside of his zone but not to choose segregation outside of his zone.' Here the right of transfer, which operates solely on the basis of a racial classification, is a one-way ticket leading to but one destination, i.e., the majority race of the transferee and continued segregation. This Court has decided that state-imposed separation in public schools is inherently unequal and results in discrimination in violation of the Fourteenth Amendment. Brown v. Board of Education, 347 U.S. 483, 98 L.ed 873, 74 S. Ct. 686, 38 ALR 2d 1180 (1954). Our task then is to decide whether there transfer provisions are likewise unconstitutional. In doing so, we note that if the transfe rprovision were made available to all students regardless of their race and regardless as well of the racial composition of the school to which he requested transfer we would have an entirely different case. Pupils could then at their option (or that of their parents) choose, entirely free of any imposed racial considerations, to remain in the school of their zone or to transfer to another.

"Classification based on race for purposes of transfers between public schools, as here, violate the Equal Protection Clause of the Fourteenth Amendment."

And the Court further said at pp. 688-689:

"The alleged equality—which we view as only superficial—of enabling each race to transfer from a de-

segregated to a segregated school does not save the plans. Liwe arguments were made without success in Brown, 347 U.S. 483, 98 L.ed. 873, 74 S.Ct. 686, 38 ALR 2d 1180, supra, in support of the separate but equal educational program. Not only is race the factor upon which the transfer plans operate, but also the plans lack a provision whereby a student might with equal facility transfer from a segregated to a desegregated school. The obvious one-way operation of these two factors in combination underscores the purely racial character and purpose of the transfer provisions. We hold that the transfer plans promote discrimination and are therefore invalid.

"This is not to say that appropriate transfer provisions, upon the parents' request, consistent with sound school administration and not based upon any state-imposed racial conditions, would fall. Likewise, we would have a different case here if the transfer provisions were unrestricted, allowing transfers to or from any school regardless of the race of the majority therein. But no official transfer plan or provision of which racial segregation is the inevitable consequence may stand under the Fourteenth Amendment."

It appears that the Court held that these transfer provisions could not stand for two separate reasons: first, on their face they contained an invalid racial classification, and second, they could operate only to perpetuate segregation. However, the Court expressly recognized that a transfer provision or policy which did not contain a racial classification and which allowed transfers as readily to a school in which the applicant would be in a racial minority as it allowed transfers to a school in which the

applicant would be in a racial majority would be valid. The Court therefore did not hold that integration is a required end result of the provision or policy. And, as we said in our earlier opinion in this very action (221 F. Supp. 968, 974), it is difficult to see how it could be held that segregation resulting from purely voluntary choice could violate the Fourteenth Amendment as it would not be "state-imposed separation." Similarly, it is difficult to see, for the same reason, ho wit could be held that segregation that resulted from "honestly" arrived at geographical zoning could violate the Fourteenth Amendment. We therefore conclude, as we concluded before, that the Constitution does not require integration and that it only requires the abolition of compulsory segregation based on race.

We come now to consider the contention of plaintiffs that the assignment and transfer plan or policy as actually carried out by defendants deprives plaintiffs of their constitutional rights, and if so, to what extent must the plan or policies be amended. In the plan heretofore approved by this Court in the summer of 1963, pupils already attending school in the system during the 1962-63 school year were to be allowed to continue in the school they were attending until graduation irrespective of whether they lived in the new unitary zone of that school, provided that all pupils who lived in the unitary zone of the school and who were entitled for that reason to attend the school would have a preferential right to attend. We approved this provision for reasons set out in our opinion (221 F. Supp. 968, 972), pointing out that the provisions would expire by its own terms in a relatively few years. With respect to assignments and transfers generally, we merely held (221 F. Supp. 965, 971) that defendants could adopt any plan o rpolic ywith respect to desegregated grades,

provided that no assignment or transfer could be based on race or have as its purpose the delay of desegregation as contemplated by the plan.

It appears that defendants, in two particulars, have gone beyond what they were allowed to do with respect to assignments and transfers:

1. They have allowed pupils as a matter of course to be assigned or to be transferred out of their unitary zones to a school in which they would be in a racial majority and have not allowed pupils as a matter of course to be assigned or to be transferred out of their unitary zones to a school in which they would be in a racial minority. More specifically, they have allowed white pupils as a matter of course to attend schools, outside of their unitary zones, in which white pupils predominate, and have allowed Negro pupils as a matter of course to attend schools, outside of their unitary zones, attended only by Negroes, but they have denied Negroes (and specifically intervening plaintiffs) the right to attend predominantly white schools outside of their unitary zones. This plan or policy clearly deprives plaintiffs of their constitutional rights, as was held by the Supreme Court in the *Goss* case, *supra*, and is clearly contrary to our prior holding.

2. They have treated pupils, after they were allowed in 1963-64 and 1964-65 to attend schools outside of their unitary zones, as if they were thereafter covered by the approved provision allowing only pupils attending in the system in 1962-63 to continue until graduation in the school in which they were then enrolled. This approved provision, by its own terms, applied only to pupils attending in the system in 1962-63.

If defendants intend to continue this policy of allowing white and Negro pupils to attend schools outside of their unitary zones where they will be in a racial majority, they must, beginning with the 1965-66 school year, also allow white and Negro pupils to the same extent and under the same terms to attend schools outside of their unitary zones where they will be in a racial minority. This is required by the *Goss* case, *supra,* and by the decree heretofore entered. Moreover, those Negro pupils who have heretofore applied for and been denied the right to attend predominantly white schools outside their unitary zones must be admitted to such schools, at least in the school year 1965-66, if they so desire. This is necessary to vindicate the Constitutional rights which have been denied them, whether or not the defendants choose to follow the policy herein approved, of allowing pupils to attend schools outside their unitary zones irrespective of whether they will be in a racial majority or minority.

It appears that, in carrying out their policy of allowing white and Negro pupils to attend schools outside their unitary zones in which they would be in a racial majority, defendants have not required these pupils to register in the schools of their unitary zones and then to apply for a transfer. Rather, they have allowed these pupils to register directly in the schools outside of their zones. Plaintiffs contend that, if defendants choose to go forward with the amended policy and plan which the Court is here approving, each pupil should be required each year to register in the school of his unitary zone and apply for a transfer; this is necessary, argue plaintiffs, to make the choice more realistic. More specifically, it is argued that, given the long history of segregation, white and Negro pupils would be much less likely to choose to attend the school of the

unitary zone in which they live, if they would be in racial minority in that school, if they are allowed to register directly in a school in another zone in which they would be in a majority. While we believe, as we have held, that a system of voluntary choice is constitutional, we also believe that every safeguard should be had in insure that choices will be conscious and considered choices and that such a choice will more likely be made if pupils are required each year initially to register in the school of the zone in which they live. Accordingly, we conclude that this must be required by defendants.

With respect to the other particular in which defendants have gone beyond what they were allowed to do, pupils who were not in the school system in 1962-63 shall not have the right, as do pupils who were attending during that year, to continue until graduation in a school outside their unitary zone.

The next issue presented is whether the amended unitary zones for elementary schools and the proposed unitary zones for punior high schools are gerrymandered so as to maximize segregation. Before dealing with this issue, we should note that plaintiffs first contend that even if the zones are not gerrymandered, they will create a large measure of *de facto* segregation, and therefore they must be redrawn to bring about more integration. However, we dealt with this contention in our earlier opinion in this case (221 F.Supp. 968, 973), and we have heretofore dealt with it again in this opinion. We have reached the conclusion that "honestly" drawn zone lines, which result in *de facto* segregation, do not deprive plaintiff of any constitutional rights.

In approaching the gerrymandering issue, we must first ascertain from the adjudicated cases what constitutes

gerrymandering in school zoning. The *Northcross* case, *supra,* and the *Downs* case, *supra,* hold that a school board may, in its discretion, use any rational basis for drawing zone lines but that it, of course, cannot consider race as a factor. *Northcross* specifically holds that the motive of minimizing the disturbance of the people and the motive of preserving school loyalties are not proper considerations in zoning. *Northcross* recognized that such considerations as utilization of the buildings, proximity of the pupils to the schools, and natural boundaries are proper considerations. *Northcross* also holds that, when challenged, the burden of proof is on the school board to show that boundaries were not drawn with a view to preserve the maximum amount of segregation.

In an earlier stage of these proceedings the Court approved elementary school zones as submitted by defendants but, on these motions for further relief, allowed plaintiffs to reopen the question as to whether these zones are gerrymandered. Defendants have redrawn the boundary between West Jackson and South Jackson elementary schools and, as so amended, have submitted these elementary school zones for approval. Defendants have, pursuant to an order of the Court heretofore entered, established unitary zones for the three junior high schools and, by consent of all parties, the hearing with respect to these zones was held concurrently with the hearing on plaintiffs' motions for further relief. It is the contention of plaintiffs that both the elementary school zones and the junior high school zones are gerrymandered and that the Court should appoint a master to redraw the zone boundaries or require the defendants to redraw them and resubmit them for approval.

Memorandum Decision

Defendants have prepared and introduced into evidence maps reflecting the location of the schools, the zone boundaries, and the location of the homes of white (in blue) and Negro (in red) children of school and pre-school age. Defendants also offered in evidence exhibits showing the capacity of the schools, the number of pupils that have been attending each, and the average size of classes. The superintendent testified that the zones were drawn without regard to race and are the result of a consideration of utilization of buildings, proximity of pupils to the schools and natural boundaries.

In addition to contending that defendants' proof shows on its face that the zones are gerrymandered, plaintiffs offered two expert witnesses, who had also prepared maps, and who contended that the zones are gerrymandered. However, the value of the testimony of these experts was undercut by the fact that they assumed that it is the duty of defendants to maximize integration because of educational benefits that would, in their opinion, flow therefrom. The value o ftheir testimony with respect to elementary schools was further somewhat undercut because their maps were aimed to show the amount of *de facto* segregation that has resulted after two years u[illegible] the plan. However, in view of voluntary transfers by white and Negro pupils, the degree of actual segregation in these schools does not itself show that the zones are gerrymandered. The value of the testimony of these experts with respect to junior high schools was somewhat undercut because they not only again assumed a duty to maximize integration but also assumed that defendants had the duty to adopt a "feeder" system whereby certain elementary schools would send their graduates only to a particular junior high. These experts admitted that in many instances the question as to where a

boundary should be drawn is one of judgment as to which honest experts could disagree.

We believe that, under the *Northcross* case, *supra*, the question whether the zones are gerrymandered should be determined primarily by consideration of the utilization of buildings, proximity of pupils to the schools, and natural boundaries.

It would be useless to set out in this opinion the relevant facts with respect to utilization, proximity and natural boundaries as to each elementary school zone. (It should be noted here that, as to utilization, the best information we have is the capacity and enrollment of each school during the past school year, which, in view of voluntary transfers, may not be an accurate projection as to the coming year and future years.) Rather, we will discuss only those boundaries as to which there apepars to be gerrymandering.

The most recent figures show that South Jackson is over enrolled and that West Jackson is under capacity. The boundary between these unitary zones as approved by the Court places Negro pupils who live much closer to West Jackson (which has been a predominantly white school but has had 14 Negro pupils) in the zone of South Jackson (which has been an all Negro school). Defendants, at the hearing, proposed to redraw that line so as to partially correct this situation but their proposal does not completely correct it. We conclude that the south line of the West Jackson zone should extend eastwardly from Poplar along Main to Royal.

The most recent figures show that both Parkview (which has been a predominantly white school with only one Negro pupil) and Washington-Douglas (which has been an all Negro school) are under capacity. The boundary between these unitary zones as approved by the Court places Negro

pupils who live much closer to Parkview in the zone of Washington-Douglas. And while the proof shows that there is considerable new development in the eastern part of the Parkview zone, there is nothing to show that Parkview would be over capacity if its zone is extended westwardly to include these Negro pupils. We conclude that the zone of Parkview should be extended westwardly to include the area bounded by Chester on the south, Royal on the west and College on the north.

The most recent figures show that both Alexander (which has been a predominantly white school but has had 87 Negro pupils) and Lincoln (which has been an all Negro school) are under capacity. The boundary between these unitary zones as approved by the Court follows the I.C.R.R. and G. M. & O. R.R. tracks southwesterly until it reaches Alice and then leaves these tracks and runs west on Alice to Royal and south on Royal to Preston. This means that there are Negro pupils who live much closer to Alexander but who must cross the railroad tracks to Lincoln. It is true that Lincoln has been somewhat more under capacity than Alexander. However, if it should become necessary, defendants could make an adjustment in the bounary between the Alexander zone and the Highland Park zone, the latter school also being under capacity. We conclude that the portion of the Lincoln zone bounded by the railroad tracks on the east, Alice on the north, Royal on the west and Preston on the south should be included in the Alexander zone.

There are three junior high schools in Jackson. Tigrett and Jackson have been all white schools and Merry has been all Negro. Tigrett is located in the western section, Merry is located in the central section and Jackson is located in the eastern section. The zones proposed by the defendants would, generally, allocate the western section

to Tigrett, the central section to Merry, and the eastern section to Jackson. The boundaries follow major streets or highways and railroads. According to the school population maps, there are a considerable number of Negro pupils in the southern part of the Tigrett zone, a considerable number of white pupils in the middle and northern parts of the Merry zone, and a considerable number of Negro pupils in the southern part of the Jackson zone. The location of the three schools in an approximate east-west line makes it inevitable that the three zones divide the city in three parts from north to south. While it appears that proximity of pupils and natural boundaries are not as important in zoning for junior highs as in zoning for elementary schools, it does not appear that Negro pupils will be discriminated against. The only real alternative offered by plaintiffs is to adopt a "feeder" syste mwhereby certain elementary schools would "feed" pupils to a particular junior high, but there is no constitutional requirement that this particular system be adopted. We conclude that the proposed junior high school zones proposed by defendants do not amount to unconstitutional gerrymandering.

Under the plan for gradual desegregation approved by the Court in the summer of 1963, the first three grades were desegregated in the school year 1963-4, the next three grades i n1964-5, and thereafter two additional grades are to be desegregated each succeeding year. Under this plan, the 7th and 8th grades only would be desegregated in the coming year, 1965-6. Plaintiffs moved the Court to amend the plan to require all remaining grades be desegregated in 1965-6, and the Court has allowed them to reopen this question. They contend that "all deliberate speed" requires this action.

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Memorandum Decision

In view of the undisputed proof that no substantial administrative problems have so far been met, we conclude plaintiffs are entitled to some acceleration in the plan. More particularly, we conclude that all of the junior high grades (7th, 8th and 9th) should be desegregated in the year 1965-6; and we further conclude that all of the senior high grades (10th, 11th and 12th) should be desegregated in 1966-7.

Plaintiffs also moved the Court to order desegregation of teachers, and the administrative and supporting personnel. At an earlier stage of this proceeding, we held that plaintiffs are entitled to assert a claim for desegregation of teachers and principals, but that they are not entitled to assert a claim for desegregation of other personnel. We took under advisement the claim with respect to teachers and principals pending implementation of the plan, and we ordered struck from the complaint he claim with respect to other personnel. (221 F. Supp. 968, 972) This determination was made on the basis of the clear holding to that effect by our Court of Appeals in *Mapp* v. *Board of Education of Chattanooga,* 319 F.2d 571, 576 (6th Cir. 1963). Accordingly, we have for consideration only the claim for desegregation of teachers and principals.

We first must ascertain the guidelines for determining whether plaintiffs are entitled to desegregation of faculty and principals. We must do this from a very limited number of cases which deal with the problem. As stated; our Court of Appeals held that plaintiffs in such a case as this are entitled to press this claim as part of their claim "to an education free of any consideration of race." It also held that they have no right to assert any constitutional claims the teachers and principals may have. (*Mapp,*

supra.) However, the Court was not specific, saying in part (319 F.2d 571, 576):

> "We agree that the teachers, principals and others are not within the class represented by plaintiffs and that plaintiffs cannot assert or ask protection of some constitutional rights of the teachers and others, not parties to the cause. We, however, read the attack upon the assignment of teachers by race not as seeking to protect rights of such teachers, but as a claim that continued assigning of teaching personnel on a racial basis impairs the students' rights to an education free from any consideration of race.
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> "... [W]e think it appropriate that the stricken allegations of the complaint, insofar as they relate to the assignment of teachers and principals, be restored to the pleading and that decision of the legal question presented await developments in the progress of the plan approved. Nothing we have said need call for any present taking of testimony on the subject of teacher and principal assignement. Within his discretion, the District Judge may determine when, if at all, it becomes necessary to give consideration to the question under discussion. We affirm, however, the order granting the motion to strike, to the extent that it applies to allegations relating to the hiring and assignment of school personnel other than teachers and principals."

In *Augustus* v. *Board of Public Instruction of Escambia County, Florida,* 306 F.2d 862 (5th Cir. 1962) the Court held, as *Mapp* later held, that it was improper to strike this

claim for relief before the trial on the merits and indicated that at such hearing relief could be granted. In *Board of Public Instruction of Duval County, Florida* v. *Braxton,* 324 F.2d 616 (5th Cir. 1964) the Court held (one judge dissenting) that the trial court was within its proper discretion in ordering a desegregation of faculty in a decree providing for desegregation of pupils. In *Bradley* v. *School Board of Richmond, Virginia,* 345 F.2d 310 (4th Cir. 1965) the Court held that the trial court was within its discretion in denying an application for desegregation of teachers. It pointed out that this issue had been ignored at the trial, and said that the granting of such relief should depend upon a balancing of the need therefor to protect the constitutional rights of the pupils against the effect it would have on the administration of the schools and the efficiency of the staffs. Two judges, dissenting on this question, said at p. 324:

> "The composition of the faculty as well as the composition of its student body determines the character of a school. Indeed, as long as there is a strict separation of the races in faculties, schools will remain 'white' and 'Negro,' making student desegregation more difficult. The standing of the plaintiffs to raise the issue of faculty desegregation is conceded. The question of faculty desegregation was squarely raised in the District Court and should be heard. It should not remain in limbo indefinitely. After a hearing there is a limited discretion as to when and how to enforce the plaintiffs' rights in respect to this, as there is in respect to other issues, since administrative considerations are involved; but the matter should be inquired into promptly. There is no legal reason

why desegregation of faculties and student bodies may not proceed simultaneously."

In one District Court case in Tennessee, *Sloan* v. *Tenth School District of Wilson County, Tennessee,* 9 Race Rel. L. Rep. 1306 (M.D. Tenn. 1964), the Court ordered desegregation of faculties, and we understand that this has been done by consent order in several other cases involving school districts of this state.

We gleam from the foregoing cases that this application for desegregation of faculties and principals largely addresses itself to the discretion of the trial court and that in exercising its discretion the Court should consider the current need for this action in effecting abolition of compulsory segregation of pupils as against any problems involved in taking this step.

The defendants contend that there is no current need to desegregate the faculties and principals and that the teachers might be seriously adverse to such action. Plaintiffs offered some testimony from Negro parents that Negro pupils are reluctant to attend schools in which all of the teachers are white, some because they are afraid that the white teachers would require higher performance and perhaps others because they are afraid that they would not receive fair treatment. These witnesses gave no specific examples. It should be noted, however, that the intervening plaintiffs, at least, are seeking to attend schools with all white faculties. Plaintiffs' education experts largely testified in terms of the educational desirability of mixed faculties, but we do not believe that this is a constitutional consideration. Plaintiffs' sociology expert testified that in his investigation of the question at Nashville he had not turned up much evidence that fear of going to school to

all white teachers is a deterrent, but he also testified that having all Negro teachers stigmatizes a school as a "Negro" school which tends to keep it segregated.

We do not believe that the proof of the plaintiffs is sufficiently strong to entitle them at this time to an order requiring integregation of the faculties and principals. At the same time we do not believe that they are, on this proof, entitled to some relief, and this Court in its discretion may fashion the remedy which it believes to be consistent with the need shown. It is obvious that the defendants have followed a policy of assigning white teachers, simply because of their race, only to schools in which the pupils are all or predominantly white, and of assigning Negro teachers, simply because of their race, only to schools in which the pupils are all Negroes. We believe that this policy should be rescinded, and that a white teacher should not be prohibited, because of his or her race, from teaching in a school in which the pupils are all or predominantly Negro, and that a Negro teacher should not be prohibited, because of his or her race, from teaching in a school in which the pupils are all or predominantly white. This would mean that white and Negro teachers, who so desire, would not be barred, because of their race, from teaching pupils all or a majority of whom were of the other race. But it also would mean that none would be forced to do so and would mean that, of course, all other usual factors could be considered in determining the assignment of teachers.

Plaintiffs next contend that they are entitled to an order prohibiting all segregation in curricular and extra-curricular activities of desegregated grades. As to curricular activities, we were under the impression that such a provision had been included in the decree heretofore entered,

but for some reason it was omitted. In any event, plaintiffs are entitled to an order providing that, with respect to desegregated grades, segregation is prohibited as to all school facilities, and as to all curricular activities, including athletics.

The question regarding extra-curricular activities is more difficult. Certainly, as to school-sponsored activities, there must be no discrimination based on race by the defendants, and plaintiffs are entitled to an order to that effect. However, we must deal in particular with an incident which has occurred which plaintiffs contend amounted to discrimination in a school-sponsored activity. It seems that the private organization which operates the Jackson Symphony Orchestra invited the pupils in certain grades in those elementary schools in which the pupils are all or predominantly white to attend a concert during school hours. The pupils in the same grades in elementary schools in which the pupils are all Negroes were not invited. Defendants accepted this invitation, and the invited pupils, including those Negro pupils who were in those grades, attended the concert. The proof showed without question that defendants were not motivated by racial considerations in accepting this invitation. We believe that this occurrence does not constitute unconstitutional discrimination. On the contrary, we believe that defendants may in their discretion allow pupils to attend an outside activity, whether it be a concert, a speaker or whatever, so long as defendants are not motivated by racial considerations.

Plaintiffs also seek an order prohibiting segregation of teacher in-service training. Although the proof is not completely clear, it appears that the only such segregation that remains results from the fact that the white teachers and

the Negro teachers are members of separate professional organizations. It appears without dispute that defendants do not control the policies of these organizations. In any event, as heretofore indicated, the *Mapp* case, *supra*, holds that plaintiffs have no standing to assert any constitutional claims that the teachers may have and may assert a claim for teacher desegregation only in support of their constitutional right, as pupils, to an abolition of discrimination based on race. The assertion by plaintiffs that what remains of segregation in teacher in-service training has an effect on their right as pupils is, on the proof in this case, extremely tenuous. We deny this application for relief.

Plaintiffs last contend that defendants should be required to pay their attorneys' fees and to pay expenses incurred by plaintiffs in the employment of certain expert witnesses.

With respect to attorneys' fees, it is incumbent on plaintiffs first to prove a legal liability on their part to pay such fees, that is, plaintiffs must prove an express or implied contract to pay either a fee specific in amount or a reasonable fee. 20 C.J.S., Costs, Sec. 218, p. 453 et seq. The proof here shows that when some of intervening plaintiffs were denied the opportunity to attend the schools to which they had applied, they called on these attorneys to represent them. The attorneys, after interviewing these plaintiffs, forthwith filed the first motion for additional relief and thereafter handled this litigation. While there was some proof that the attorneys might be able to look elsewhere for payment in the event intervening plaintiffs did not pay them, there was certainly an implied contract between these plaintiffs and the attorneys that a reasonable fee would be paid by them.

Memorandum Decision

In *Bell* v. *School Board of Powhatan County, Virginia,* 321 F.2d 494, 500 (4th Cir. 1963), a school desegregation case, the court held that the trial court had abused its discretion in refusing to allow plaintiffs to recover attorneys' fees. In that case the school authorities had been guilty of ". . . a long continued pattern of evasion and obstruction. . . ." In a later school segregation case, the Fourth Circuit affirmed the trial court in its denial of attorneys' fees, but recognized that a fee should be allowed ". . . when it is found that the bringing of an action should have been unnecessary and was compelled by the school board's unreasonable, obdurate obstinacy." *Bradley* v. *School Board of the City of Richmond,* 345 F.2d 310 (4th Cir. 1965).

In this case during the summer of 1964 when intervening plaintiffs applied to attend schools outside of their zones, defendants were, as a matter of course, allowing both white and Negro pupils to do so if they would be in a racial majority. It appears that the applications of plaintiffs were denied by the superintendent because they would be in a minority in the schools they sought to attend. The action by the superintendent in denying their applications was in clear violation of the decree of this court, and it was in clear violation of the constitutional rights of these plaintiffs as had been expressly held by the Supreme Court in *Goss, et al.* v. *Board of Education of the City Knoxville,* 373 U.S. 683 (1963), all of which defendants must have, or certainly should have, known. For this reason, plaintiffs are entitled to recover an attorneys' fee for their handling of this aspect of the litigation. It is no answer to say that these plaintiffs did not seek redress from the action of the superintendent by appealing to the defend-

ant Board members. Defendants do not even contend that the superintendent was not acting with authority; it appears that he was following an adopted plan or policy. Moreover, the proof shows that plaintiffs were not advised that their applications had been denied until the Saturday before the Monday that the school session was to begin.

On the other hand, with respect to the other issues presented by these motions for additional relief, it does not appear that defendants have violated any order of this court or have in any wise acted improperly. We therefore award plaintiffs and attorneys fee of $1,000.00 as costs in this cause.

As stated, plaintiffs also seek to recover as costs the fees and expenses of their expert witnesses. However, these experts did not testify on any issue as to which this court has found defendants in violation of its decree or as to any issue as to which the court has found that defendants have acted in disregard of the constitutional rights of these plaintiffs. Moreover, these experts in large measure gave educational or sociological opinions of no particular constitutional relevance. We therefore deny this application.

In closing this opinion, this court would like to point out that there appears to be little communication between the school authorities and the interested Negro leadership in the community. There certainly should be. As desegregation progresses under this plan, there are bound to be points of difference between the Negro citizens and the school authorities as to rights of the Negroes and the obligations of the authorities. These differences should first be the subject of a conference in an effort to compose them amicably. They should be brought to court only when

the differences cannot so be resolved and are of substantial significance.

An order will be prepared for entry by the parties consistent with the rulings in this opinion.

ENTER this 30th day of July, 1965.

/s/ BAILEY BROWN
United States District Judge

A TRUE COPY.

ATTEST:

W. LLOYD JOHNSON, Clerk.

By A. H. SAWYER, DC

Order of the United States District Court for the Western District of Tennessee

(filed August 11, 1965)

[Caption Omitted]

This cause came on before the Honorable Bailey Brown, District Judge, at a pre-trial conference held May 26, 1965 in the Court's Chambers, whereupon the Court did, upon the statement of facts by defendants' counsel to the Court, declare and decide that the manner of application by the defendants of the transfer provisions is unconstitutional unless the defendants allow a transfer of a student from a school in which said student be in the racial majority to a school, outside of his zone, in which such student would be in a racial minority on the same basis that transfers were allowed to a student from a school in which such student is in the racial minority to a school, outside his zone, in which said student would be in a racial majority. The Court further did find and determine that the remaining issues to be heard by the Court at a later hearing would be as follows:

1. Whether or not the elementary school unitary zones previously approved by the Court, as subsequently amended by defendants, amounted to unconstitutional gerrymandering.

2. Whether or not the junior high school unitary zones proposed by defendants amounted to unconstitutional gerrymandering.

3. Whether or not the Court should order a desegregation of faculty and administrative and supporting personnel, including faculty in-service training, in the City Schools of Jackson.

Order

4. Whether or not the Court should order an acceleration of the plan of desegregation heretofore approved by the Court.

5. Whether or not the defendants had discriminated against the plaintiffs in extra-curricular activities.

6. Whether or not plaintiffs should be awarded an attorneys' fee in this proceeding.

This cause thereupon came on to be heard on the 18th day of June, 1965, and upon a former day of the term, before the Honorable Bailey Brown, District Judge, sitting without intervention of a jury, upon the Motion for Further Relief and to add parties as additional and/or intervening plaintiffs, filed by the plaintiffs on 4 September 1964 against the defendants, Board of Commissioners of the City of Jackson, Tennessee, its board members and C. J. Huckaba, Superintendent of City Schools, a replication filed by said defendants to said motion on or about 11 September 1964, the pretrial order entered by the Court on 28 September 1964 allowing the intervention of additional parties plaintiff and granting and denying certain other preliminary relief having to do with preparation for trial of said motion, the supplemental replication to said motion of September 4, 1964 filed by said defendants on or about 12 November 1964, a petition filed by said defendants on or about 13 November 1964 seeking approval of proposed junior high school unitary zones filed concurrently therewith and also seeking consolidation of the hearing on said petition with the hearing upon plaintiffs' said motion for further relief, plaintiffs' specifications of objections to said junior high school unitary zones filed by defendants and their agreement to consolidation of said hearings, the additional mo-

tion for further relief against said defendants filed by the plaintiffs on or about 19 April 1965, the replication of said defendants to said additional motion for further relief of the plaintiffs, filed on or about 18 May 1965, and the exhibits filed by the respective parties to the foregoing pleadings, the evidence introduced by the parties in open court, arguments of counsel and the entire record upon the issues prescribed by the Court at the May 26, 1965 pre-trial conference, from all of which the Court finds and holds that the plaintiffs are entitled to certain relief upon some of the issues, but that the relief sought by plaintiffs should be denied on other issues, as hereinafter provided, and as more fully stated in the Memorandum Decision filed by the Court on 30 July 1965, which is hereby made a part of the record and is adopted as the Findings of Fact and the Conclusions of Law made by the Court upon the various pleadings set forth hereinabove.

IT IS, THEREFORE, ORDERED, ADJUDGED, DECREED AND ENJOINED by the Court as follows:

1. The assignment and transfer plan or policy in the City of Jackson, Tennessee school system as actually carried out by said defendants deprives plaintiffs of their constitutional rights, and must be amended in the following particulars:

(a) If said defendants continue their policy of allowing white and Negro pupils, as a matter of course, to attend schools outside of their unitary zones where they will be in a racial majority, they must, beginning with the 1965-66 school year, also allow white and Negro pupils to the same extent and under the same terms to attend schools, as a matter of course, outside of their unitary zones where they will be in a racial minority. In addition, those Negro pupils

who have heretofore applied for and been denied the right to attend predominantly white schools outside their unitary zones must be admitted to such schools, at least in the school year 1965-66, if they so desire.

(b) In allowing pupils to attend schools outside their unitary zones irrespective of whether they will be in a racial majority or minority, each pupil must be required each year to register in the school of his unitary zone and apply for a transfer, and shall not be permitted to register directly in the school or schools outside of his or her zone.

(c) All pupils who were not in the school system in 1962-63 shall not have the right, as do pupils who were attending during that year, to continue until graduation in a school outside their zone. All such pupils shall be required each year to register in the school of their respective unitary zones and apply for any transfer, if desired.

2. The unitary zones established by defendants and heretofore approved by this Court for the elementary schools of the City of Jackson, as subsequently amended by defendants, in some areas appear to be gerrymandered and will therefore be revised by defendants in the following particulars:

(a) The south line of the West Jackson School zone shall extend eastwardly from Poplar along Main to Royal.

(b) The zone of Parkview School shall be extended westwardly to include the area bounded by Chester on the south, Royal on the west and College on the north.

(c) That portion of the Lincoln School zone bounded by the railroad tracks on the east, Alice on the north, Royal on the west and Preston on the south shall be included in the Alexander School Zone.

3. The proposed junior high school zones proposed by defendants do not amount to unconstitutional gerrymandering and are approved by the Court.

4. Desegregation in the City of Jackson School System will be accelerated as follows: All of the junior high grades (7th, 8th and 9th) shall be desegregated at the beginning of the school year 1965-66; and all of the senior high grades (10th, 11th and 12th) shall be desegregated at the beginning of the school year 1966-67 so that said school system shall be totally desegregated at the beginning of said latter year.

5. The application of plaintiffs for an order requiring integration of faculty is at this time denied. However, the policy of defendants of assigning white teachers only to schools in which the pupils are all or predominantly white and Negro teachers only to schools in which the pupils are all Negro is by this order rescinded to the extent that white teachers, who so desire, will not be barred from teaching in schools in which the pupils are all or predominantly Negro, and Negro teachers, who so desire, will not be barred from teaching in schools in which the pupils are all or predominantly white.

To implement this change in policy, defendants must forthwith, as to substitute teachers, and each year beginning with the year 1966-67, as to all teachers, publicize it and obtain from each teacher an indication of willingness or an indication of objection to teaching in a school in which the pupils are all or predominantly of the other race. All teachers who indicate such a willingness will be assigned to schools without consideration of the race of the teacher or the pupils, but all other usual factors may be considered in assigning teachers. Nothing in this order, however, will

be construed as requiring the assignment of an objecting teacher to a school in which the pupils are all or predominantly of the other race or will be construed as requiring a refusal to employ or a dismissal of a teacher who objects to teaching in such a school. This change in policy will be effective as to substitute teachers during the remainder of the school year 1965-66 and as to all teachers beginning with the school year 1966-67.

6. The Court finds that its previous Judgment entered in this cause failed to include an order requiring defendants to eliminate all racial discrimination and segregation in curricular and school sponsored extra-curricular activities in the City of Jackson School System and the Court so orders. However, the Court has not found the defendants guilty of any unconstitutional discrimination in connection herewith.

7. The application of plaintiffs for an order requiring desegregation of administrative and supporting personnel is denied.

8. As to teacher in-service training and professional activities, plaintiffs are denied relief.

9. Plaintiffs are entitled to recover an attorneys' fee for the handling of that aspect of the litigation pertaining to the application of the intervening plaintiffs in the summer of 1964 to transfer to schools outside of their zones and the defendants' denial of said application in clear violation of the constitutional rights of these plaintiffs. In this connection, the Court finds that these services consisted of interviewing of plaintiffs at Jackson on the day before school

was to begin, preparation and filing of motion, attendance by the attorneys at two pre-trial conferences at Memphis, and preparation of order for entry, and that, therefore, a fee of $1,000.00 for said attorneys would be fair and reasonable and is awarded as costs in this action.

10. The application of plaintiffs to recover as costs the fees and expenses of their expert witnesses is denied.

11. Jurisdiction of the case is retained by the Court pending full implementation of desegregation in the City School System of Jackson, Tennessee, and either party may apply.

ENTER this 11th day of August, 1965.

BAILEY BROWN
United States District Judge

A TRUE COPY.

ATTEST:

W. LLOYD JOHNSON, Clerk.

By A. H. SAWYER, DC

Opinion of the United States Court of Appeals For the Sixth Circuit

Nos. 17,118 and 17,119

BRENDA K. MONROE, *et al.*,

Plaintiffs-Appellants,

v.

BOARD OF COMMISSIONERS, CITY OF JACKSON, TENNESSEE, *et al.*, and COUNTY BOARD OF EDUCATION, MADISON COUNTY, TENNESSEE, *et al.*,

Defendants-Appellees.

APPEAL FROM THE U. S. DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE

Decided July 21, 1967

Before: O'SULLIVAN, PHILLIPS and PECK, Circuit Judges.

O'SULLIVAN, Circuit Judge. In 1963 a suit was filed by Brenda K. Monroe and others, Negro children and their parents, to bring about the desegregation of the public schools of the City of Jackson, and of Madison County, Tennessee.[1]

The District Court required the school authorities to submit plans to accomplish desegregation and ultimately granted the relief sought by approving parts of a submitted plan and ordering other steps to be taken. Separate opin-

[1] The City of Jackson is located in Madison County and the respective school authorities are the Board of Commissioners of the City of Jackson and the County Board of Education of Madison County.

ions were written, one involving the City of Jackson schools, reported as *Monroe* v. *Board of Commissioners of the City of Jackson, Tennessee, et al.*, 221 F. Supp. 968 (W.D. Tenn. E.D. 1963) and the other relating to Madison County schools, reported in *Monroe* v. *Board of Commissioners, etc., et al.*, 229 F. Supp. 580 (W.D. Tenn. E.D. 1964). Appeals to this Court from these cases were dismissed by agreement. Obedient to the above decisions, all grades of the schools involved have been desegregated.

The litigation with which we now deal arises from Motions for Further Relief filed in the District Court by plaintiffs. By these motions, plaintiffs sought to accomplish greater integration of the school children, desegregation of the teaching staffs, and the enjoining of described practices of the school authorities which were alleged to be violative of the District Judge's original decrees and contrary to new developments in the law. The District Judge, again, dealt separately with the city and the county schools in disposing of the Motions for Further Relief. His decision as to the city schools is reported in *Monroe* v. *Board of Commissioners, City of Jackson,* 244 F. Supp. 353 (W.D. Tenn. E.D. July 30, 1965) and as to the County Schools in *Monroe* v. *Board of Education, Madison County, Tennessee, et al.*, —— F. Supp. —— (W.D. Tenn. E.D. August 2, 1965). These are the cases before us on this appeal; the plaintiffs are the appellants. These opinions, with the earlier ones reported at 221 F. Supp. 968 and 229 F. Supp. 580, *supra,* set out the facts and we will restate them only where needed to discuss the present contentions of the plaintiffs-appellants.

Opinion of the United States Court of Appeals For the Sixth Circuit

1) *Compulsory integration.*

Appellants argue that the courts must now, by reconsidering the implications of the *Brown* v. *Board of Education* decisions in 347 U.S. 483 (1954) and 349 U.S. 294 (1955), and upon their own evaluation of the commands of the Fourteenth Amendment, require school authorities to take affirmative steps to eradicate that racial imbalance in their schools which is the product of the residential pattern of the Negro and white neighborhoods. The District Judge's opinion discusses pertinent authorities and concludes that the Fourteenth Amendment did not command compulsory integration of all of the schools regardless of an honestly composed unitary neighborhood system and a freedom of choice plan. We agree with his conclusion. We have so recently expressed our like view in *Tina Deal, et al.* v. *The Cincinnati Board of Education,* 369 F(2) 55 (CA 6, 1966), petition for cert. filed, 35 LW 3394 (U.S. May 5, 1967) (No. 1358), that we will not here repeat Chief Judge Weick's careful exposition of the relevant law of this and other circuits. He concluded "We read *Brown* as prohibiting only enforced segregation." 369 F(2) at 60. We are at once aware that we were there dealing with the Cincinnati schools which had been desegregated long before *Brown,* whereas we consider here Tennessee schools desegregated only after and in obedience to *Brown.* We are not persuaded, however, that we should devise a mathematical rule that will impose a different and more stringent duty upon states which, prior to *Brown,* maintained a de jure biracial school system, than upon those in which the racial imbalance in its schools has come about from so-called de facto segregation—this to

be true even though the current problem be the same in each state.

We are asked to follow *United States* v. *Jefferson County Board of Education*, 372 F(2) 836 (CA 5, 1966), which seems to hold that the pre-*Brown* biracial states must obey a different rule than those which desegregated earlier or never did segregate. This decision decrees a dramatic writ calling for mandatory and immediate integration. In so doing, it distinguished *Bell* v. *School City of Gary, Indiana*, 324 F(2) 209 (CA 7, 1963), *cert. den.* 377 U.S. 924, on the ground that no pre-*Brown* de jure segregation had existed in the City of Gary, Indiana. 372 F(2) at 873. It would probably find like distinction in our *Tina Deal* decision because of *Cincinnati's* long ago desegregation of its schools. We, however, have applied the rule of *Tina Deal* to the schools of Tennessee. In *Mapp* v. *Board of Education*, 373 F(2) 75, 78 (CA 6, 1967) Judge Weick said,

> "To the extent that plaintiffs' contention is based on the assumption that the School Board is under a constitutional duty to balance the races in the school system in conformity with some mathematical formula, it is in conflict with our recent decision in *Deal* v. *Cincinnati Board of Education*, 369 F(2) 55 (6th Cir. 1966)."

However ugly and evil the biracial school systems appear in contemporary thinking, they were, as *Jefferson, supra*, concedes, de jure and were once found lawful in *Plessy* v. *Ferguson*, 163 U.S. 537 (1896), and such was the law for 58 years thereafter. To apply a disparate rule because these early systems are now forbidden by *Brown* would be in the

nature of imposing a judicial Bill of Attainder. Such proscriptions are forbidden to the legislatures of the states and the nation—U.S. Const. Art. I, Section 9, Clause 3 and Section 10, Clause 1. Neither, in our view, would such decrees comport with our current views of equal treatment before the law.

This is not to say that Tennessee school authorities can dishonestly construct or deliberately contrive a system for the purpose of perpetuating a "maximum amount" of its pre-*Brown* segregation. *Northcross* v. *Board of Education of City of Memphis*, 33 F(2) 661, 664 (CA 6, 1964). But to the extent that *United States* v. *Jefferson County Board of Education,* and the decisions reviewed therein, are factually analogous and express a rule of law contrary to our view herein and in *Deal*, we respectfully decline to follow them.

2) *Gerrymandering.*

Appellants assert that while giving surface obedience to the establishment of a unitary zoning system and freedom of choice, the school officials of the City of Jackson had been guilty of "gerrymandering" in order "to preserve a maximum amount of segregation." Were this true, it would be violative of the law. *Northcross* v. *Board of Education of City of Memphis*, 302 F(2) 818, 823, (CA 6, 1962), *cert. den.* 370 U.S. 944, and *Northcross* v. *Board of Education of City of Memphis*, 333 F(2) 661, 664 (CA 6, 1964). The District Judge in the instant matter did hold that as to some boundary lines "there appears to be gerrymandering." *Monroe* v. *Board of Commissioners, City of Jackson, supra,* 244 F. Supp. at 361. As to these instances, he ordered changes in the school zone lines. *Id.* at 361, 362. But, as to the junior high schools, he concluded,

> "that the proposed junior high school zones proposed by defendants do not amount to gerrymandering." 244 F. Supp. at 362.

Without making our own recitation of the relevant evidence, we express our agreement with the District Judge.

3) ***Faculty desegregation.***

In the accomplishment of desegregation in the involved schools, there remain some that are attended only by Negro and others only by white children. The teaching staff conforms substantially to this pattern—all Negro teachers in the all Negro schools and all white teachers in the all white schools. Little attention was paid to the teaching staff in the early desegregation cases. *Brown* v. *Board of Education, supra*, did not speak on it, nor did the early relevant decisions from this circuit. In *Mapp* v. *Board of Education of Chattanooga*, 319 F(2) 571, 576 (CA 6, 1963), however, we ordered restored to the complaint there involved allegations and prayers for relief relating to assignment of teachers and principals, but ordered also that "decision of the legal question presented await development of the progress of the plan approved." 319 F(2) at 576. And we further concluded that "within his discretion, the District Judge may determine when, if at all, it becomes necessary to give consideration to the question. . . ." *Ibid.*

This leisurely postponement of consideration of faculty desegregation appealed to the Fourth Circuit, when in *Bradley* v. *School Board of City of Richmond, Virginia*, 345 F(2) 310, 320, 321 (CA 4, 1965), it said:

> "The possible relation of a reassignment of teachers to protection of the constitutional rights of pupils need

not be determined when it is speculative. When all direct discrimination in the assignment of pupils has been eliminated, assignment of teachers may be expected to follow the racial patterns established in the schools. An earlier judicial requirement of general reassignment of all teaching and administrative personnel need not be considered until the possible detrimental effects of such an order upon the administration of the schools and the efficiency of their staffs can be appraised along with the need for such an order in aid of protection of the constitutional rights of pupils."

But the Supreme Court declared this would not do, and in *Bradley* v. *School Board,* 382 U.S. 103 (1965), remanded the case to require the Richmond School Board to proceed with study and resolution of the faculty integration question, stating,

"There is no merit to the suggestion that the relation between faculty allocation on an alleged racial basis and the adequacy of the desegration plans is entirely speculative." 382 U.S. at 105.

The *Bradley* opinion was followed by *Rogers* v. *Paul, et al,* 382 U.S. 198 (1965); once again the Supreme Court remanded the cause for consideration of the faculty desegregation problem.

The District Judge in the matter now before us did hear some evidence on the question of faculty desegregation and concluded,

"We do not believe that the proof of the plaintiffs is sufficiently strong to entitle them to an order requiring

integration of the faculties and principals." 233 F. Supp. at 364.

He did, however, attack a then current policy of the school authorities whereby white teachers and Negro teachers, "simply because of their race," were respectively assigned only to schools whose pupils were all or predominantly of that teacher's race. The order implementing his decision contained the following:

> "The application of plaintiffs for an order requiring integration of faculty is at this time denied. However, the policy of defendants of assigning white teachers only to schools in which the pupils are all or predominantly white and Negro teachers only to schools in which the pupils are all Negro is by this order rescinded to the extent that white teachers, who so desire, will not be barred from teaching in schools in which the pupils are all or predominantly Negro, and Negro teachers, who so desire, will not be barred from teaching in schools in which the pupils are all or predominantly white.
>
> To implement this change in policy, defendants must forthwith, as to substitute teachers, and each year beginning with the year 1966-67, as to all teachers, publicize it and obtain from each teacher an indication of willingness or an indication of objection to teaching in a school in which the pupils are all or predominantly of the other race. All teachers who indicate such a willingness will be assigned to schools without consideration of the race of the teacher or the pupils, but all other usual factors may be considered in assigning

teachers. Nothing in this order, however, will be construed as requiring the assignment of an objecting teacher to a school in which the pupils are all or predominantly of the other race or will be construed as requiring a refusal to employ or a dismissal of a teacher who objects to teaching in such a school. This change in policy will be effective as to substitute teachers during the remainder of the school year 1965-66 and as to all teachers beginning with the school year 1966-67."

We note that this order was handed down before *Bradley* v. *School Bd., supra,* and we are constrained to hold that it does not commit or require the school authorities to adopt an adequate program of faculty desegregation which will pass muster under the implied command of the *Bradley* case. Whatever *Bradley's* clear language, we cannot read it otherwise than as forbidding laissez faire handling of faculty desegregation. It implies that the accomplishment of that goal cannot be left to the free choice of the teachers and that the Board must exercise its authority in making faculty assignments so as to assist in bringing to fruition the predicted benefits of school desegregation.

No Supreme Court decision, however, has as yet provided a blue print that will achieve faculty desegregation. The United States Office of Education has indicated that, in some affirmative way, school boards must act to correct past discriminatory practices in the assignment of teachers.[2] But its recommendations do not have the force of

[2] "§181.13 Faculty and Staff

(a) *Desegregation of Staff.* The racial composition of the professional staff of a school system, and of the schools in the system, must be considered in determining whether students are subjected to discrimination in educational programs. Each school system is responsible for correcting

law; neither does it provide clear guidelines to make easy the job of school boards in dealing with this problem. It will be difficult to eliminate the forcing of people into places and positions because of race and at the same time compulsorily assign a school teacher on the basis of his or her race.

It is sufficient for us to say now that the formula announced by the District Judge, leaving the decision of integration of the faculties to the voluntary choice of the

---

the effects of all past discriminatory practices in the assignment of teachers and other professional staff.

(b) *New assignments.* Race, color, or national origin may not be a factor in the hiring or assignment to schools or within schools of teachers and other professional staff, including student teachers and staff serving two or more schools, except to correct the effects of past discriminatory assignments.

• • •

(d) *Past assignments.* The pattern of assignment of teachers and other professional staff among the various schools of a system may not be such that schools are identifiable as intended for students of a particular race, color, or national origin, or such that teachers or other professional staff of a particular race are concentrated in those schools where all, or the majority, of the students are of that race. Each school system has a positive duty to make staff assignments and reassignments necessary to eliminate past discriminatory assignment patterns. Staff desegregation for the 1966-67 school year must include significant progress beyond what was accomplished for the 1965-66 school year in the desegregation of teachers assigned to schools on a regular full-time basis. Patterns of staff assignment to initiate staff desegregation might include, for example: (1) Some desegregation of professional staff in each school in the system, (2) the assignment of a significant portion of the professional staff of each race to particular schools in the system where their race is a minority and where special staff training programs are established to help with the process of staff desegregation, (3) the assignment of a significant portion of the staff on a desegregated basis to those schools in which the student body is desegregated, (4) the reassignment of the staff of schools being closed to other schools in the system where their race is a minority, or (5) an alternative pattern of assignment which will make comparable progress in bringing about staff desegregation successfully."

teachers, does not obey current judicial commands. We, therefore, remand this phase of the litigation to the District Judge to reconsider upon a further evidentiary hearing the matter of faculty desegregation.

4) ***Desegregation of Teachers Organizations.***

It appears that at the time of the hearing in the District Court there existed in Tennessee two voluntary organizations, the Tennessee Education Association, whose membership was confined to white teachers, and the Tennessee Education Congress, made up of Negro teachers. Traditionally, the School Board allowed separate holidays to permit the members of these organizations to attend so-called "teacher in-training" programs. The District Judge dealt with this subject as follows:

> "Plaintiffs also seek an order prohibiting segregation of teacher in-service training. Although the proof is not completely clear, it appears that the only such segregation that remains results from the fact that the white teachers and the Negro teachers are members of separate professional organizations. It appears without dispute that defendants do not control the policies of these organizations. In any event, as heretofore indicated, the Mapp case, supra, holds that plaintiffs have no standing to assert any constitutional claims that the teachers may have and may assert a claim for teacher desegregation only in support of their constitutional right, as pupils, to an abolition of discrimination based on race. The assertion by plaintiffs that what remains of segregation in teacher in-service training has an effect on their right as pupils is, on the proof in this

case extremely tenuous. We deny this application for relief." 244 F. Supp. at 365.

The evidence on this subject is too meager to permit us to evaluate the extent to which the school authorities participated in or aided the activities of these separate teacher organizations, and the degree to which membership by the teachers in them would, in turn, affect the rights of the pupils. It appears, however, that these in-service training programs for teachers are conducted pursuant to state law, and are financed with public funds.[1] We make clear that the plaintiff pupils do have standing to assert that the existence of separate teacher organizations based on race and the school authorities' cooperation with their separated activities such as the in-training program "impairs the students' rights to an education free from any consideration of race." *Mapp* v. *Board, supra,* 319 F(2) at 576. If the District Judge's above quoted language can be read as a contrary holding, it is error. We also remand this issue to the District Judge for further consideration.

5) *The Jackson Symphony Orchestra.*

It appeared that the Jackson Symphony Association, with permission of the school authorities, arranged for a program by the Jackson Symphony Orchestra at one of the Jackson schools. The ladies in charge of this event invited the children in several grades of the Jackson City Schools, the County schools, and the Catholic schools. Those students included some from the all-white schools, and some from the schools, public and parochial, containing both

[1] See e.g., Chap. 76 Tenn. Public Acts, 1965, Sec. 24.

Negro and white students. Students in all-Negro schools were not invited for the two performances involved. Testimony by one of the ladies of the Symphony Association denied any discriminatory motivation in the selection of the pupils, suggesting that the capacity of the auditorium was exhausted by those invited and in attendance. She said,

> "If we had room, we would have had every child in town there—fourth, fifth and sixth grades of every school, but we didn't have room."

The school authorities had nothing to do with the matter of who was to be chosen to attend the concert. Its only participation was to allow the use of the auditorium. While it would be impermissible for school authorities to allow use of school facilities for entertainment that was discriminatory, nothing was developed by the evidence to cause us to criticize the District Judge's conclusion that the "defendants were not motivated by racial considerations" in their handling of this matter. *Monroe* v. *Board of Commissioners, supra,* 244 F. Supp. at 365.

Another issue discussed by the District Judge, —— F. Supp. at ——, the so-called "split season," has been rendered moot by the elimination of the practice.

The cause is remanded to the District Judge for further consideration of the matter of faculty desegregation and teacher in-service training, and is otherwise affirmed.

Judgment of the United States Court of Appeals for the Sixth Circuit

(filed July 21, 1967)

No. 17,118

BRENDA KAY MONROE, *et al.*,

Plaintiffs-Appellants,

—vs.—

BOARD OF COMMISSIONERS OF THE CITY OF JACKSON, TENNESSEE, ITS BOARD MEMBERS, and C. J. HUCKABA, SUPERINTENDENT OF CITY SCHOOLS,

Defendants-Appellees.

Before:

O'SULLIVAN, PHILLIPS and PECK,

Circuit Judges.

JUDGMENT

APPEAL from the United States District Court for the Western District of Tennessee.

THIS CAUSE came on to be heard on the record from the United States District Court for the Western District of Tennessee and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that this cause be and the same is hereby remanded to the District Judge for further consideration of the matter of faculty desegregation and teacher in-service training, and is otherwise affirmed.

No costs on appeal awarded either party.

Entered by order of the Court.

/s/ CARL W. REUSS
Clerk

A True Copy.

SUPREME COURT U. S.

No. 740

NOV 13 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

BRENDA K. MONROE, *et al.*,
Petitioners,

— vs. —

BOARD OF COMMISSIONERS OF THE CITY OF JACKSON, TENNESSEE, *et al.*,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RUSSELL RICE, SR.
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McCOWAT-MERCER PRESS, JACKSON, TENN

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JURISDICTION

This proceeding is premature for two reasons: (1) The cause has been remanded to the District Court for further proceedings concerning faculty and (2) the record in this cause is devoid of the present conditions which exist in the Jackson City School System from the application of the District Court decision of July 30, 1965.

This petition should be denied as it is identical in purpose and background to a similar petition filed with this Court and denied in the case of *Tina Deal, etc.* v. *The Cincinnati Board of Education*, 369 F.(2d) 55, (also from the 6th Cir.) See Appendix, *Petition for Certiorari filed* O.T. 1967 No. 131. *Cert. denied.* O.T. 1967.

COUNTER-STATEMENT OF QUESTION PRESENTED

Do the *Brown* decisions (*Brown* v. *Board of Education*, 347 U.S. 483 (2d Opinion) 349 U.S. 294) require compulsory integration so as to create a racial balance in schools?

If so, (1) is such requirement applicable to all States or (2) only to those States which had segregation statutes (the South) prior to the *Brown* decisions?

STATEMENT

This case is the culmination of efforts by the real plaintiff in these desegregation cases to have this Court interpret (a) the *Brown* decisions as requiring compulsory integration in the South and (b) something far less in other areas of the Country.

The Jackson School System began desegregation before the filing of any suit to require same, admittedly on a very limited basis and perhaps not as rapidly as some would like, but a beginning was made, against overwhelming public opinion, to bring the system into compliance with *Brown*.

In 1963 the City was directed to file a plan of desegregation which it did, including a districting plan for elementary schools, which plan, after modification as to time schedule, was approved by the District Court. (*Monroe* v. *City of Jackson*, 221 F.Supp. 968 [WD Tenn. 1963]).

Plaintiffs filed a further attack on the elementary zones approved by the Court in September 1964. At approximately the same time the School Board filed proposed Junior High School Zones to which plaintiffs filed exceptions. The two matters were consolidated for hearing by the District Court. Prior to the beginning of the hearings the school board suggested some changes to the elementary zoning map which the Court had once approved. The Court accepted these changes and at the conclusion of the hearing made certain minor additional changes covering an area no larger than two or three City blocks. The Court also liberalized the transfer provisions of the School Board and ordered certain steps in regard to faculty. This District Court decision was entered July 30, 1965, and is the decision complained of in the Sixth Circuit Court of Appeals. The Sixth Circuit affirmed all but the faculty provisions. There is absolutely nothing in the record to reflect the effect of these changes on the student makeup of Jackson City Schools since July 30, 1965.

The City of Jackson School System has an absolutely free transfer plan under the District Court order approved by the Sixth Circuit. See also *Goss* v. *Board of Education*, 373 U.S. 683. Every negro student in the City of Jackson is able to transfer to any school in the system for which otherwise eligible and every white student has the same identical right. Capacity of the school is the only limitation on transfers into a school. Every student, white or negro, is required each year to register in the school located in the district in which he lives in accordance with the District Court order.

Petitioners refer to reports on file with U. S. Office of Education (not in the record) to reflect 1966 figures on mixing in Jackson schools. The exact figures for the year 1966 were 475 negro students attending mixed classes out of a total negro enrollment of 3205. 1967[1] reports reflect that approximately one out of every five negro children in the system attend integrated classes. (Exact figures 615 out of 3228.)

As stated above, the right to do so is extended to all. White children have the same right. State imposed segregation based on race does not exist in Jackson, Tennessee, schools. The order of the District Court as approved by the Sixth Circuit makes this abundantly clear. Plaintiffs are not complaining about the application nor the actual result attained from these orders and the record itself does not reflect such. They complain solely on the grounds that the District Court and the Sixth Circuit Court of Appeals do not order affirmative *compulsory integration* of the Jackson schools as opposed to the clear and concise language in both *Brown* cases ordering an end to compulsory segregation based on race.

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[1] Report to U. S. Office of Education 1967.

ARGUMENT

The sole point presented by this petition therefore is whether or not the *Brown* decisions require *compulsory integration* in schools and as a refinement of the question:

a. Is the requirement for compulsory integration applicable nationwide?

b. Is the requirement for compulsory integration applicable only to those states having statutory segregation prior to the *Brown* decisions (the South)?

The Sixth Circuit Court of Appeals in this case, as well as in *Deal*, answers these questions with a flat "No."

Every other Court of Appeals which has considered this question has also ruled flatly that compulsory integration is not required, including the Court of Appeals for the Fifth Circuit even though counsel is aware of the *Jefferson County* case. For the Fifth Circuit to arrive at the *Jefferson County* decision it had to overrule nearly fifty of its own prior decisions on this question including *Avery* v. *Wichita Falls Ind. School Dist.*, 241 F.2d 230; *Borders* v. *Rippy*, 247 F.2d 268; *Cohen* v. *Public Housing Adm.*, 257 F.2d 73; *Boson* v. *Rippy*, 285 F.2d 43; *Evers* v. *Jackson Municipal Separate School Dist.*, 328 F.2d 408; *Stell* v. *Savannah-Chatham County Board of Education*, 333 F.2d 55.

A careful reading of the decision in *Jefferson County* indicates however that the decision was dictated by the massive legal resistance to *Brown* in the Fifth Circuit Area and not by any real effort on the part of the Fifth Circuit to torture the plain wording of *Brown* to mean *compulsory integration*. Whatever may be the merit of judicial impatience with the citizenry, as in *Jefferson County*, no attempt at all is made to lay the decision at the door of the *Brown* cases. The Fifth Circuit has simply come up with its own version of what in its opinion the *Brown* cases should have been. No other Circuit agrees.

There has been no defiance whatever on the part of the City of Jackson and no such situation exists in this case as the Fifth Circuit seems to feel exists in *Jefferson County*.

Fourth Circuit

In *Bradley* v. *School Board of Richmond*, 345 F.2d 310, vacated and remanded on other grounds, 382 U.S. 103 (1965), a majority of the Fourth Circuit sitting en banc said:

> "It has been held again and again, however, that the Fourteenth Amendment prohibition is not against segregation as such. The proscription is against discrimination. . . . There is nothing in the Constitution which prevents his voluntary association with others of his race or which would strike down any state law which permits such association. The present suggestion that a Negro's right to be free from discrimination requires that the state deprive him of his volition is incongruous. . . . There is no hint (in *Brown*) of a suggestion of a constitutional requirement that a state must forbid voluntary associations or limit an individual's freedom of choice except to the extent that such individual's freedom of choice may be affected by the equal rights of others. A state or a school district offends no constitutional requirement when it grants to all students uniformly an unrestricted freedom of choice as to schools attended, so that each pupil, in effect, assigns himself to the school he wishes to attend."
>
> "Imposed discrimination is eliminated as readily by a plan under which each pupil initially assigns himself as he pleases as by a plan under which he is involuntarily assigned on a geographic basis. . . . The other means (in addition to geographic zoning) of abolishing the dual zone system was to do away with zones completely. From the point of view of the ultimate objective of eliminating the illegal dual zoning, dezoning seems the obvious equivalent of rezoning and, adminis-

tratively, far easier of accomplishment when the School Board intends ultimate operation to be founded upon the free choice of the pupils."

In June, 1967, the Fourth Circuit considered similar problems in *Bowman* v. *County School Board of Charles City County, Virginia* (June 12, 1967—not yet reported) and in *Green* v. *County School Board of New Kent County, Virginia* (decided June 12, 1967—not yet reported) said:

> "They contend that compulsive assignment to achieve a greater intermixture of the races, notwithstanding their individual choices, is their due. We cannot accept that contention . . .
>
> "If each pupil, each year, attends the school of his choice, the constitution does not require that he be deprived of his choice unless its exercise is not free. This we have held and we adhere to our holdings."

Eighth Circuit

The Eighth Circuit dealt with the question in *Clark* v. *Board of Education of Little Rock School District*, 369 F.2d 661 (8th Circ. 1966), rehearing denied 374 F.2d 569 (8th Cir. 1967). The Court rejected the contention that the constitutionality of a plan depends upon whether it "works" in achieving numerical results, saying:

> "Thus, they (plaintiffs) argue that the 'freedom of choice' plan is not succeeding in the integration of the schools."
>
> "Though the board has a positive duty to initiate a plan of desegregation, the constitutionality of that plan does not necessarily depend upon favorable statistics indicating positive integration of the races . . . The system is not subject to constitutional objections simply because large segments of whites and Negroes choose to continue attending their familiar schools. . . ."

"In short, the constitution does not require a school system to force a mixing of the races in schools according to some predetermined mathematical formula. Therefore, the mere presence of statistics indicating absence of total integration does not render an otherwise proper plan unconstitutional."

The Eighth Circuit concluded:

"Notwithstanding the H. E. W. Guidelines and the recent opinion of the Fifth Circuit (in *Jefferson County*), when a student is given a well publicized annual right to enter the school of his choice, coupled with periodic mandatory choices as set forth in the Board's amended plan, we can find on the face of it no unconstitutional state action. We find no state act that results in discrimination against Negroes (374 F.2d at 571) . . . ."

. . . . . .

"Therefore, if in fact all the students wishing to transfer were fully accommodated, the constitution would unquestionably be satisfied . . . (374 F.2d at 572) . . . ."

"If all of the students are, in fact, given a free and unhindered choice of schools, which is honored by the school board, it cannot be said that the state is segregating the races, operating a school with dual attendance areas or considering race in the assignment of students to the classrooms. We find no unlawful discrimination in the giving of students a free choice of schools (369 F.2d at 666)."

"They are afforded an annual *right* to transfer schools if they so desire. The failure to exercise this right does not result in the student being assigned to a school on the basis of race. Rather, the student is assigned to the school he is presently attending, by reason of a choice originally exercised solely by the student (369 F.2d at 668) . . ."

. . . . . .

"On its face, we believe that the plan, as approved by us, is proper and constitutional, and appellants have made no showing that this non-mandatory freedom of choice plan to laterally transfer schools had infringed their constitutional rights (374 F.2d at 571)."

Tenth Circuit

Although at first glance it might appear that the Tenth Circuit is at variance with the above cases in *Board of Education of the Oklahoma City Public Schools* v. *Dowell* F.2d (10th Cir., January 23, 1967), *cert. denied*, 35 U.S. L. Week 3418 (U.S. May 29, 1967), this decision was bottomed upon an expressed finding of bad faith by the school board involved. On the other hand, the Tenth Circuit reaffirmed its decision in *Downs* v. *Board of Education of Kansas City*, 336 F.2d 988 (1964) *cert. denied* 380 U.S. 914, in which the Court had said:

"Appellants also contend that even though the Board may not be pursuing a policy of intentional segregation, there is still segregation in fact in the school system and under the principles of *Brown* v. *Board of Education*, *supra*, the Board has a positive and affirmative duty to eliminate segregation in fact as well as segregation by intention. While there seems to be authority to support that contention, the better rule is that although the Fourteenth Amendment prohibits segregation, it does not command integration of the races in the public schools and Negro children have no constitutional right to have white children attend schools with them."

First Circuit

Springfield School Committee v. *Barksdale*, 348 F.2d 261 (1965).

Seventh Circuit

Bell v. *School, etc., City of Gary*, 324 F.2d 209 (1963) *cert. denied*, 377 U.S. 924 (1964).

There is tremendous pressure to push the 14th Amendment into areas that properly should be the subject of legislation and administrative action. This problem was confronted by Professor Paul A. Freund of the Harvard Law School in his article, "Civil Rights and the Limits of Law," 14 *Buffalo L. Rev.* 199 (1964). Professor Freund made reference to the rejection of efforts to push the Fourteenth Amendment further in the involvement in public accommodations, and wrote in part:

> "Those who argue that the Fourteenth Amendment, in and of itself, applies or should apply to the places of public accommodation do so partly because they see in the Fourteenth Amendment the most appropriate source of moral strength. But I believe they overlook some institutional considerations of importance. If we were to use the Fourteenth Amendment directly without the intervention of an act of Congress, as some members of the Court wished to do last June, there would have been all kinds of unresolved questions of the range of application of the Fourteenth Amendment; not merely in racial discrimination, for the Fourteenth Amendment is far broader than that, but in other forms of equal protection, nepotism in business, for example, in the concept of due process of law applied, for instance, to the conduct of stockholder meetings, or labor union meetings. All of these would potentially be Federal Constitutional questions to be resolved by authoritative decisions overrulable by constitutional amendment, but surely lacking in that sense of tentativeness, of experimentation, of progressivism, of flexibility, that are the hallmarks of statutory or common law development as distinguished from constitutional adjudication. And so I for one welcome the fact that the Court did not see fit last June to decide the cases on sit-ins in places of public accommodation on grounds of the Fourteenth Amendment per se. The choice of institutional means pointed in the direction of the

more flexible and ad hoc approach. 14 *Buffalo L. Rev.*, 203-204."

He extended this analiysis to the problem of so-called "de facto" segregation and urged the courts not to get involved in the creation of affirmative programs to balance races through constitutional law:

> "Still a legislature or a school board ought to be able to take account of the facts of segregation in the interest of promoting long-run de facto desegregation, which is surely a legitimate aim. This is the position taken by both the New York Court of Appeals and the New Jersey Supreme Court, there being no issue in the case of requiring integration constitutionally but only of *permitting the race factor to be taken into account by a school board disposed to do so,* without violating the abstract principle of color-blindness. This is a question of *educational and social policy, a choice of means to a legitimate end,* the encouragement of desegregation, as segregation itself would be an illegitimate end. There the matter rests, and in my judgment, is likely to rest so far as constitutional law is concerned. 14 *Buffalo L. Rev.* 199, 205" (Emphasis added)

CONCLUSION

In conclusion, it appears that the petition is premature in that the record reflects nothing of the application, or effect of such application, of the District Court order. Further, the matter is still pending in the District Court.

Furthermore, this petition presents no new question not already presented to the Court, in at least one other case, *Deal* v. *Cincinnati Board of Education*, and the petition was denied.

For these reasons it is respectfully submitted the petition for the Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing reply brief has been mailed by regular United States Mail, postage prepaid, to adversary counsel of record.
This 9th day of November, 1967.

RUSSELL RICE, SR.
Attorney for Respondents

APPENDIX

Tina Deal, etc., et al., vs. Cincinnati Board of Education.

369 F(2)55

Opinion of the United States Court of Appeals for the Sixth Circuit, December 6, 1966

Before WEICK, Chief Judge, O'SULLIVAN and PHILLIPS, Circuit Judges.

WEICK, Chief Judge. The suit in the District Court was a class action against the Board of Education of the City of Cincinnati, brought by the parents and next friends of Negro pupils enrolled in the public schools of the city, to enjoin the operation of allegedly racially segregated public schools, to enjoin the construction of new schools on sites which would increase and harden alleged existing patterns of racial segregation, and for declaratory and other relief.

The Board denied that it created, operated or maintained racially segregated schools, and alleged that the only genuine issue in the case was whether it violated the constitutional rights of the plaintiffs by refusing to adopt and enforce an affirmative policy of balancing the races in the Cincinnati Public School System.[1]

[1] On March 9, 1964, after the commencement of the present action, the Board of Education adopted the following policy statement to guide its officers and employees:

"(1) As a matter of policy, the Board would like to avoid predominantly Negro schools to the extent that the Board has any control over the causes which create such predominance. But in exercising any control in this area the Board will not deviate from the long established neighborhood school plan or the requirement of Section 3313.48 R.C. that schools be located where they will be most convenient for the largest number of students.

"The Board is willing to make race of students one of the elements to be considered in the establishment of school attendance zone lines so long as this can be done consistently with the neighborhood school policy, the requirements of Section 3313.48, and the numerous factors which have always been considered in establishing such zone lines as—safety of children, travel distance and capacity of school.

"(2) The Board does not accept the concept of de facto segregation and will not agree to any proposal to bus students, to transfer classes or any other program to attempt to balance races as such."

The evidence in the case consisted of a number of lengthy stipulations, exhibits, and oral testimony. At the close of plaintiffs' evidence defendants moved for judgment, which motion was taken under advisement by the Court. Defendants presented their entire case except for expert testimony. The Court then granted defendant's motion for judgment without considering the evidence offered by the defendants. He handed down an opinion which he adopted as findings of fact and conclusions of law under Rules 41(b) and 52(a), Fed.R.Civ.Proc.[2] In essence, the Court held that there was no constitutional duty incumbent upon the Board to balance the races in the public school system, and that there was a failure of proof on the part of the plaintiffs to establish a policy of segregation or gerrymandering on the part of the Board.

WAS THERE A CONSTITUTIONAL DUTY ON THE PART OF THE BOARD TO BALANCE THE RACES IN THE CINCINNATI PUBLIC SCHOOLS WHERE THE IMBALANCE WAS NOT CAUSED BY ANY ACT OF DISCRIMINATION ON ITS PART?.

At the outset it should be pointed out that the State of Ohio abolished segregation in the public schools on February 22, 1887, which was more than 67 years before the United States Supreme Court barred it on constitutional grounds in the momentous decision of *Brown* v. *Board of Education*, 347 U.S. 483 (1954).[3]

The so-called neighborhood plan for the location of public schools is authorized by statute under which Ohio School Boards are required to—

> ". . . provide for the free education of the youth of school age within the district under its jurisdiction, at such places as will be convenient for

[2] *Deal* v. *Cincinnati Board of Education*, 244 F.Supp. 572 (S.D. Ohio 1965).

[3] 84 Ohio Laws 34, enacted Feb. 22, 1887. The Supreme Court of Ohio upheld and enforced the law in the following year, *Board of Education* v. *State*, 45 Ohio St. 555, 16 N.E. 373 (1888).

The Cincinnati school system discontinued compulsory segregation promptly after the enactment of this Ohio Statute in 1887. Since that time Negro students have had the opportunity to attend the neighborhood schools in Cincinnati on the same basis as white students living in the same localities.

the attendance of the largest number thereof." Ohio Rev. Code §3313.48.

We think the legislature had the power to enact this statute. The Cincinnati Board of Education has complied with it.

Appellants contend that the maintenance of a public school system in which racial imbalance exists is a violation of their constitutional right to the equal protection of the law. They assert that because the Negro student population is not spread uniformly throughout the Cincinnati school system, without a showing of deliberate discrimination or even racial classification, there is a duty of constitutional dimensions imposed on the school officials to eliminate the imbalance. Appellants claim that it is harmful to Negro children to attend a racially imbalanced school and this fact alone deprives them of equal educational opportunity.

The essence of the *Brown* decision was that the Fourteenth Amendment does not allow the state to classify its citizens differently solely because of their race. While the detrimental impact of compulsory segregation on the children of the minority race was referred to by the Court, it was not indispensable to the decision. Rather, the Court held that segregation of the races was an arbitrary exercise of governmental power inconsistent with the requirements of the Constitution.

A finding of educational or other harm is not essential to strike down enforced segregation. This is shown by many subsequent cases nullifying separate facilities of all kinds with no evidence of harm.

In summarizing this principle, the Court said that classifications based on race violate the Fourteenth Amendment because they are obviously invidious and irrelevant. *Goss* v. *Board of Education*, 363 U.S. 683, 687 (1963).

Thus it is not necessary that a victim of racial discrimination prove that he was harmed in any specific material sense in order to invalidate state-imposed racial distinctions. See *Johnson* v. *Virginia*, 373 U.S. 61 (1963) (seating in courtrooms); *Watson* v. *Memphis*, 373 U.S. 526 (1963) (municipal parks); *Burton*

v. *Wilmington Parking Authority*, 365 U.S. 715 (1961) (restaurants in public buildings); *Dawson* v. *Mayor and City Council of Baltimore*, 220 F.2d 386 (4th Cir. 1955) aff'd 350 U.S. 877 (1955) (public beaches and bathhouses).

In *Bolling* v. *Sharpe*, 347 U.S. 497 (1954), which is a companion case to *Brown*, and which involved the validity of school segregation in the District of Columbia, the Court held that the Fifth Amendment was violated. The Court emphasized that it was the fact of discriminatory classification by the government that violated the Constitution, and looked no further for evidence of educational or psychological injury, saying—

> "Classifications based solely upon race must be scrutinized with particular care, since they are contrary to our traditions and hence constitutionally suspect." *Bolling* v. *Sharpe*, *supra*, at 499.

The principle thus established in our law is that the state may not erect irrelevant barriers to restrict the full play of individual choice in any sector of society. Since it is freedom of choice that is to be protected, it is not necessary that any particular harm be established if it is shown that the range of individual options has been constricted without the high degree of justification which the Constitution requires. It is harm enough that a citizen is arbitrarily denied choices open to his fellows.

Conversely, a showing of harm alone is not enough to invoke the remedial powers of the law. If the state or any of its agencies has not adopted impermissible racial criteria in its treatment of individuals, then there is no violation of the Constitution. If factors outside the schools operate to deprive some children of some of the existing choices, the school board is certainly not responsible therefor.

Appellants, however, argue that the state must take affirmative steps to balance the schools to counteract the variety of private pressures that now operate to restrict the range of choices presented to each school

child. Such a theory of constitutional duty would destroy the well-settled principle that the Fourteenth Amendment governs only state action. Under such a theory, all action would be state action, either because the state itself had moved directly, or because some private person had acted and thereby created the supposed duty of the state to counteract any consequences.

The standard to be applied is "equal educational opportunity." The Court in *Brown* cast its decision thus because it recognized that it was both unnecessary and impossible to require that each child come through the complex process of modern education with the same end result. This approach grants due respect for the unavoidable consequences of variations in individual ability, home environment, economic circumstances, and occupational aspirations. Equal opportunity requires that each child start the race without arbitrary official handicaps; it does not require that each shall finish in the same time.

Appellants, however, pose the question of whether the neighborhood system of pupil placement, fairly administered without racial bias, comports with the requirements of equal opportunity if it nevertheless results in the creation of schools with predominantly or even exclusively Negro pupils. The neighborhood system is in wide use throughout the nation and has been for many years the basis of school administration. This is so because it is acknowledged to have several valuable aspects which are an aid to education, such as minimization of safety hazards to children in reaching school, economy of cost in reducing transportation needs, ease of pupil placement and administration through the use of neutral easily determined standards, and better home-school communication. The Supreme Court in *Brown* recognized geographic districting as the normal method of pupil placement and did not foresee changing it as the result of relief to be granted in that case. *Brown* v. *Board of Education*, 347 U.S. 483, 495 note 13, question 4(a); *Brown* v. *Board of Education*, 349 U.S. 294, 300-01 (1955). But

see *Blocker* v. *Board of Education of Manhasset*, 226 F.Supp. 208, 221-222 (E.D.N.Y. 1964).

Because of factors in the private housing market, disparities in job opportunities, and other outside influences, (as well as positive free choice by some Negroes), the imposition of the neighborhood concept on existing residential patterns in Cincinnati creates some schools which are predominantly or wholly of one race or another. Appellants insist that this situation, which they concede is not the case in every school in Cincinnati, presents the same separation and hence the same constitutional violation condemned in *Brown*. We do not accept this contention. The element of inequality in *Brown* was the unnecessary restriction on freedom of choice for the individual, based on the fortuitous, uncontrollable, arbitrary factor of his race. The evil inherent in such a classification is that it fails to recognize the high value which our society places on individual worth and personal achievement. Instead, a racial characterization treats men in the mass and is unrelated to legitimate governmental considerations. It fails to recognize each man as a unique member of society.

In the present case, the only limit on individual choice in education imposed by state action is the use of the neighborhood school plan. Can it be said that this limitation shares the arbitrary, invidious characteristics of a racially restrictive system? We think not. In this situation, while a particular child may be attending a school composed exclusively of Negro pupils, he and his parents know that he has the choice of attending a mixed school if they so desire, and they can move into the neighborhood district of such a school. This situation is far removed from *Brown*, where the Negro was condemned to separation, no matter what he as an individual might be or do. Here, if there are obstacles or restrictions imposed on the ability of a Negro to take advantage of all the choices offered by the school system, they stem from his individual economic plight, or result from private, not school, preju-

dice.[4] We read *Brown* as prohibiting only enforced segregation.

The School Board, in the operation of the public schools, acts in much the same manner as an administrative agency exercising its accumulated technical expertise in formulating policy after balancing all legitimate conflicting interests. If that policy is one conceived without bias and administered uniformly to all who fall within its jurisdiction, the courts should be extremely wary of imposing their own judgment on those who have the technical knowledge and operating responsibility for the educational system. Thus, whereas such a geographical principle might be totally unacceptable in the administration of facilities such as beaches, parks, restaurants, or golf courses (see desegregation cases cited above), the school system presents problems of an altogether different nature and the fair minded judgment of the school officials is entitled to full consideration in determining whether freedom of choice has been preserved for the children within the limits necessary for effective educational practice. See *Watson* v. *Memphis*, *supra*, at 531-532.

We hold that there is no constitutional duty on the part of the Board to bus Negro or white children out of their neighborhoods or to transfer classes for the sole purpose of alleviating racial imbalance that it did not cause, nor is there a like duty to select new school sites solely in furtherance of such a purpose.

The bussing of pupils away from the neighborhoods of their residences may create many special problems for boards of education. These include the providing of

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[4] The District Court correctly excluded evidence of alleged discrimination in the public and private housing markets. Such discrimination is caused, if in fact it does exist, by persons who are not parties to this case and the Board has no power to rectify that situation. If appellants have any valid claim for infringement of their rights by public housing or urban renewal officials, they may obtain appropriate relief against them under the Fourteenth Amendment. With respect to private actions amounting to discriminatory practice, while there is no federal constitutional right available to appellants, they may seek relief from the state Civil Rights Commission or in the state courts, if relief is denied, under the provisions of the Ohio Fair Housing Law. Ohio Rev. Code §4112.01-07.

adequate transportation and proper facilities and personnel for the supervision, education and well being of *all* pupils. All of this must be accomplished within the Board's budget.

Although boards of education have no constitutional obligation to relieve against racial imbalance which they did not cause or create, it has been held that it is not unconstitutional for them to consider racial factors and take steps to relieve racial imbalance if in their sound judgment such action is the best method of avoiding educational harm. *Balaban* v. *Rubin*, 14 N.Y.2d 193, 199 N.E.2d 375 (1964), *cert. denied* 379 U.S. 881 (1964); *Morean* v. *Board of Education of Montclair*, 42 N.J. 237, 200 A.2d 97 (1964).

> "The tenor of these and related decisions . . . clearly indicates that the Fourteenth Amendment, while prohibiting any form of invidious discrimination, does not bar cognizance of race in a proper effort to eliminate racial imbalance in a school system." *Offerman* v. *Nitkowski*, 248 F.Supp. 129, 131 (W.D.N.Y. 1965)

In dealing with the multitude of local situations that must be considered and the even greater number of individual students involved, we believe it is the wiser course to allow for the flexibility, imagination and creativity of local school boards in providing for equal opportunity in education for all students. It would be a mistake for the courts to read *Brown* in such a way as to impose one particular concept of educational administration as the only permissible method of insuring equality consistent with sound educational practice. We are of the view that there may be a variety of permissible means to the goal of equal opportunity, and that room for reasonable men of good will to solve these complex community problems must be preserved. See Freund, *Civil Rights and the Limits of the Law*, 14 Buffalo L.Rev. 199, 205 (1964).

Moreover, our refusal to restrict the school board with a mathematically certain formula for the vindication of individual constitutional rights is not an innovation. The right to a trial by an impartial, fairly

selected jury, is well established in our law and it has been protected against the same sort of disguised racial discrimination that has been attempted in the school desegregation cases. *Eubanks* v. *Louisiana*, 356 U.S. 584 (1958); *Smith* v. *Texas*, 311 U.S. 128 (1940); *Norris* v. *Alabama*, 294 U.S. 587 (1935); *Ex parte Virginia*, 100 U.S. 339 (1879); *Strauder* v. *West Virginia*, 100 U.S. 303 (1879).

However, it is equally clear that a defendant in a criminal case is not constitutionally entitled to demand a proportionate number of his race on the jury which is to try him nor on the venire or jury roll from which petit jurors are to be chosen. *Swain* v. *Alabama*, 380 U.S. 202, 208 (1965); *Akins* v. *Texas*, 325 U.S. 398, 403 (1945). While the two situations may not be completely analogous, the potential dangers to a criminal defendant forced to face a racially imbalanced jury, are at least as great as the intangible, often speculative injuries threatening a student in a racially imbalanced school. The cases recognize that the calculus of equality is not limited to the single factor of "balanced schools"; rather, freedom of choice under the Fourteenth Amendment is a function of many variables which may be manipulated differently to achieve the same result in different contexts.

If the separation in imbalanced schools is the result of racial discrimination, the officials must take steps to remedy the situation. However, the Constitution does not prescribe any single particular cure, and the mere fact of imbalance alone is not a deprivation of equality in the absence of discrimination.

Two other Circuits have considered this question and have come to the same conclusion. *Downs* v. *Board of Education of Kansas City*, 336 F.2d 988 (10th Cir., 1964), *cert. denied* 380 U.S. 914 (1965); *Bell* v. *School, City of Gary*, 324 F.2d 209 (7th Cir. 1963), *cert. denied* 377 U.S. 924 (1964). See also *Springfield School Comm.* v. *Barksdale*, 348 F.2d 261, 264 (1st Cir. 1965).

Appellants rely on several decisions which they contend establish the constitutional invalidity of imbalanced schools. However, it would seem that these cases

do not go that far. In each of them there was an added element which transmuted mere separation into segregation, difference into discrimination. This is in accord with our holding that bare statistical imbalance alone is not forbidden. There must also be present a quantum of official discrimination in order to invoke the protection of the Fourteenth Amendment.

In *Taylor* v. *Board of Education of City School Dist. of New Rochelle*, 294 F.2d 36 (2nd Cir. 1961), *cert. denied* 368 U.S. 940 (1961), the Court of Appeals characterized as "crucial" the District Court's finding that the defendant School Board has deliberately created and maintained a segregated school, saying at page 39:

> "In short, race was made the basis for school districting, with the purpose and effect of producing a substantially segregated school."

This situation, where affirmative gerrymandering of school districts had been accomplished and maintained with the motive of separating the races, was found to go "beyond *mere* imbalance" (emphasis added). This latter language clearly indicates that the Court's theory was one of "imbalance plus." See also Kaplan, *Segregation, Litigation and the Schools: The New Rochelle Experience*, 58 Nw. U.L. Rev. 1 (1963).

Appellants place much emphasis on *Dowell* v. *School Board of Oklahoma City Public Schools*, 244 F. Supp. 971 (W.D. Okla. 1965), but we are unable to adapt that case to the problem of racial imbalance. Despite appellants' assertion that the District Court in *Dowell* dealt with facts similar to those in the case before us, it is clear that it did not. In that case the problem was one of initial desegregation of a school system which had previously been organized along the dual racial lines condemned by *Brown*. The Court was explicit in this respect:

> "This case does not raise issues regarding a school board's constitutional duty to correct racial imbalance in localities where there is no prior history of segregation, or where prior racial policies are deemed corrected." (pp. 980-981)

Further, it is clear that the duty of a school board in first imposing a neighborhood districting system where none was used before, is different from that where the system has been used for many years and the imbalance in the schools is the result of population mobility among the various neighborhoods. In *Dowell*, the Court noted that the relative immobility of the Negro residents was used by the school board in separating them through the neighborhood policy, while in Cincinnati one of the primary causes of imbalance has been the rapid movement of the Negro population into different areas of the city. Thus, the problem in *Dowell* was far closer to the gerrymandering in *Taylor* than to anything in the classic statistical imbalance cases in northern cities.

Finally, in the one case in which a district Court apparently accepted the appellant's theory of racial imbalance, *Barksdale* v. *Springfield School Comm.*, 237 F.Supp. 543 (D. Mass. 1965), the First Circuit, in vacating the decision and dismissing the complaint without prejudice specifically rejected any such asserted constitutional right. *Springfield School Comm.* v. *Barksdale*, 348 F.2d 261, 264 (1st Cir. 1965).

Appellants' right to relief depends on a showing of more than mere statistical imbalance in the Cincinnati schools. They must also expose that added quantum of discriminatory state action which deprives them of their constitutional right to freedom of choice. If the school officials, through overt practice or by subterfuge, have treated students differently solely because of race, then they not only must cease doing so, but also must take affirmative action to remedy the condition which they have caused. Thus, even if the Negro students were distributed uniformly in the schools, if other forms of discrimination were used against them they would still be entitled to the aid of the law. When no discrimination is shown, racial imbalance alone is no warrant for relief.

Did The Board Of Education Intentionally Cause Racial Imbalance In The Cincinnati Public Schools, Deprive Negro Children Of Equal Educational Opportunities, And Discriminate Against Negroes In The Hiring And Assignment Of Teachers?

In their "Statement of Questions Involved" appellants assert that they have sufficiently shown that the Board of Education has *intentionally* caused, and then failed to eliminate, serious racial imbalance in the Cincinnati public schools, has afforded Negro children who are confined to segregated schools, inferior educational programs and facilities, and has provided school faculties and personnel which reflect the racial patterns of students. They state that children who attend racially imbalanced schools suffer injury constituting a denial of equal educational opportunity.

The findings of fact of the District Court assume significance in our review of this phase of the case. Under Rule 52(a) the court was required to find the facts specially. The findings should be both "comprehensive and pertinent to the issues to provide a basis for decision." *Schilling* v. *Schwitzer-Cummins Co.*, 142 F.2d 82, 84 (D.C. Cir. 1944); *Shapiro* v. *Rubens*, 166 F.2d 659 (7th Cir. 1948). In meeting this standard, the District Courts are not required to prepare elaborate findings on every possible issue or contention raised at trial. However, there must be subsidiary findings to support the ultimate conclusions of the court. *Kelley* v. *Everglades Drainage District*, 319 U.S. 415, 420 (1943); *Dearborn Nat'l Cas. Co.* v. *Consumers Petroleum Co.*, 164 F.2d 332, 333 (7th Cir. 1947). See also *Townsend* v. *Benamente*, 339 F.2d 421 (9th Cir. 1964). But see *Gay Games, Inc.* v. *Smith*, 132 F.2d 930, 931 (7th Cir. 1943).

At the trial level this case confronted the District Court with an enormous amount of evidence in the form of detailed maps, charts, statistical tables, sociological studies, and historical accounts, in addition to a substantial amount of oral testimony, expert and otherwise. To his credit, the District Judge succeeded

to a great degree in expediting the trial through the extensive use of many stipulations and effective pretrial procedures, which sharpened the issues. However, in his opinion he adopted as fair the following statement taken verbatim from the School Board's brief:

> "The Cincinnati Public School System includes a number of schools which are attended almost entirely by Negro pupils, a number of schools attended entirely by white pupils, and a number of schools attended by both Negro and white pupils in various percentages of each of the races; the racial composition of each school is simply a result of the racial composition of the neighborhoods which they serve."

Then, after discussing the issue of imbalance, he stated:

> "Their [appellants'] failure to produce evidence to establish a policy of segregation or gerrymandering on the part of defendants strongly suggests that such practices have not been engaged in. It is here found that plaintiffs have failed to establish a deprivation of rights under the law or under the Constitution of the United States by the requisite degree of proof . . ."

In dealing with the issue of discrimination in the context of a great metropolitan educational complex, these general findings do not present an adequate basis for review by this Court.

The District Court's finding on the racial composition of the schools in Cincinnati reveals that the schools are indeed racially imbalanced. In other words, the Negro student population is not spread uniformly among the individual schools, mainly because of the operation of the neighborhood school policy in conjunction with the residential concentration of Negroes in some areas. As the District Court held, and we affirmed above, this fact by itself gives rise to no relief. However, the crucial fact to be found is whether the racial imbalance was intentionally caused by gerrymandering or by other alleged discriminatory prac-

tices on the part of the Board. On that point the District Judge said only that appellants had failed to produce evidence to establish gerrymandering or other discriminatory practice and that this failure strongly suggested that such practices did not exist. Such a general finding must be supported by subsidiary findings of fact. *Kelley* v. *Everglades Drainage District, supra.*

Appellants, through extensive use of discovery techniques, adduced vast quantities of information concerning matters such as alleged discrimination in school attendance zoning, transportation policies, teacher selection and assignment, comparative test results, and policies on transfers and overcrowding of students. Some of their contentions with respect thereto are answered by appellees on appeal here, but some are not. This is due partly to the truncated status of the case at the time of the District Court's decision on the motion to dismiss, and partly because the Court considered only appellants', and not the school Board's, evidence in ruling on the motion.

An example of such unanswered and unaccounted for situations is the districting of the Sawyer Junior High School where the enrollment is mostly Negro. The fact is that its boundaries exclude children who live across the street from it in a largely white neighborhood. The School Board in its brief offered no explanation for this situation or for the selection of the Sawyer site so close to the existing Withrow Junior High School.

We have stated above that a showing of impairment of a Negro student's capacity to learn, arising from his school's racial imbalance, does not, standing alone, make out a case of constitutional deprivation. Evidence of such harm, however, may indeed be relevant to the issues of the case before us. Appellants offered expert evidence on this subject. The School Board offered no opposing expert testimony, no doubt because the Court granted the Board's motion to dismiss, made at the close of plaintiffs' proofs. Our review would be helped by a finding as to whether the District Judge considered plaintiffs' expert testimony of such relevance, weight or probative value as to make an issue calling for rebuttal proof by defendant.

No findings were made on these disputed issues. Without findings we are unable to determine whether discrimination existed with respect to specific schools and programs.

Other errors have been asserted which, in the light of our other holdings, we deem insubstantial.

The judgment of the District Court is affirmed on the issue of racial imbalance not intentionally caused by the Board, and the case is remanded for further findings on the issues of claimed discrimination in specific schools and programs and claimed harm to Negro students, allegedly caused by racially imbalanced schools, and for the taking of such additional relevant evidence as either party may offer. *Northcross v. Board of Education of Memphis*, 333 F.2d 661, 663-664 (6th Cir. 1964).

SUPREME COURT, U. S.
FILED
FEB 15 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 740

BRENDA K. MONROE, *et al.*,

Petitioners,

—v.—

BOARD OF COMMISSIONERS OF THE CITY OF JACKSON, TENNESSEE, *et al.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONERS

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Citations to Opinions Below

The district court's opinion is reported at 244 F. Supp. 353, and is printed in the Appendix at pp. 365-389. The opinion of the Court of Appeals is reported at 380 F.2d 955 and is printed in the Appendix at pp. 397-409. An earlier district court opinion in this case is reported at 221 F. Supp. 968, and is printed in the Appendix at p. 33.

Jurisdiction

The judgment of the Court of Appeals was entered July 21, 1967.. The petition for writ of certiorari was filed October 19, 1967, and was granted January 15, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

Question Presented

Whether the courts below erred by approving a school desegregation plan which failed to make reasonable provisions to abolish the dual school system, and by using a standard for judging the plan which failed to recognize the affirmative duty of the school board to disestablish the segregated school system.

Constitutional and Statutory Provisions Involved

This case involves Section 1 of the Fourteenth Amendment to the Constitution of the United States, and 42 U.S.C. § 1983 providing a right of relief in equity for violations of constitutional rights.

Statement of the Case

This is a school segregation case involving the public schools of the City of Jackson, Tennessee.[1] Jackson is a small to medium-sized city in midwestern Tennessee, with a school system of almost 8,000 students, about 60% white and 40% Negro.[2] As early as 1956, leaders of the Jackson Negro community began petitioning the Board of Commissioners to desegregate the schools in compliance with this Court's decision in the *School Segregation Cases*

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[1] An action seeking desegregation of the adjoining Madison County, Tennessee school system is not involved in this petition. The county and city school systems were sued in the same complaint, but the county and city cases were severed and tried separately by the trial court. An appeal involving the county schools was argued and decided in the Court of Appeals with this City case, but no petition for certiorari was filed in the County case.

[2] In 1964-65, there were 3,194 Negroes and 4,610 white pupils in the system (Plaintiffs' Exhibit 26, A. 359).

(*Brown* v. *Board of Education*, 347 U.S. 483, 349 U.S. 294) (A. 357-358). They met with failure until the 1961-62 school year when the board admitted three Negro students to a white school (A. 24). The following year (1962-63), four more Negro students were admitted to a white school (A. 24). Except for these 7 students, the 13 schools in the system remained totally segregated in their student bodies and faculties. In the elementary grades 1-6, there were five white schools (Highland Park, Alexander, Whitehall, Parkview and West Jackson) and three Negro schools (Lincoln, South Jackson, Washington-Douglas). The junior high school grades (7-9) were served by two white schools (Tigrett Jr. High, Jackson Jr. High) and one Negro school (Merry Jr. High). Grades 10-12 were served by a white school (Jackson Senior High) and a Negro school (Merry Senior High—located in the same building with Merry Jr. High).

Petitioners, who are Negro pupils and parents in the Jackson public school system, brought this action January 8, 1963, in the District Court for the Western District of Tennessee. Their complaint alleged that the Jackson Board of Commissioners operated a compulsory racially segregated school system with a dual system of white and Negro schools, and that the individual plaintiffs had been discriminatorily denied admission in white schools in violation of their Fourteenth Amendment rights (A. 3). Petitioners sought injunctive relief to enable the named plaintiffs to attend specified white schools. In addition, they prayed for an order for a "complete plan for the prompt and speedy reorganization of the entire systems of public schools . . . into unitary, nonracial systems of schools . . . [including] a plan for the assignment, education and treatment of students or enrollees on a nonracial basis, the assignment and treatment of teachers, principals, . . . on a

nonracial basis, and the elimination of all and any other discriminations in said systems . . . which are based on race or color" (A. 22). The district court promptly, on January 25, 1963, granted a preliminary injunction requiring the admission of the four plaintiffs to previously white schools. The Board of Commissioners, by answer, denied that the school system was segregated and asserted that seven Negroes had been admitted to formerly all white schools under Tennessee's Pupil Placement Act (A. 23, 24). However, the answer admitted that the Pupil Placement Act was "not adequate as a plan for reorganizing the (City) schools into a nonracial system" (A. 25).

June 19, 1963, District Judge Brown granted plaintiffs' motion for summary judgment and ordered the board to file a desegregation plan (A. 27). The board filed a proposed plan July 19, 1963 (A. 29), and after an evidentiary hearing the plan was approved with modifications in August 1963. (See 221 F. Supp. 968; A. 33-50.) The desegregation plan (A. 29) as modified by the August 20, 1963, judgment of the district court (A.42), provided for the elimination of compulsory segregation rules in five stages with all grades to be affected by the 1967-68 school year. As various school grades were desegregated, the plan provided for the school officials to designate geographical attendance areas to be served by each school. Pupils residing within these areas had the right to attend the schools in their zones (A. 30). Pupils already in schools were permitted to remain where they were until graduation notwithstanding the new zones. Additionally, the school superintendent was granted the power to "grant or require" transfers of pupils to schools other than the school in their zones on application or on his own initiative (A. 31-32). The court also approved—over petitioners' objections of gerrymandering—the board's school attendance zones for elementary

schools. The court held that the board "should have administrative discretion in establishing unitary zones, provided that the zones do not clearly thwart the plan to bring about abolition of discrimination" (A. 39), and that the zones proposed "do not constitute an abuse of this discretion" (A. 40). The court directed (in accord with the plan of gradual desegregation) that zone maps for junior high schools and senior high schools be filed in 1965 and 1966, respectively. In an addendum to the opinion (responding to a new trial motion), the court reiterated its view that the zones were not gerrymandered (A. 46).

After the desegregation plan had been in effect two years, the five Negro schools remained all-Negro as before; 120 Negroes attended formerly white schools. The enrollments by race for the 1964-65 term were:[3]

Elementary Schools	*Bldg. Capacity*	*Negro Pupils*	*White Pupils*	*Total*
Lincoln	875	709	0	709
South Jackson	525	589	0	589
Washington-Douglas	525	434	0	434
Highland Park	760	0	590	590
Parkview	750	1	654	655
Whitehall	315	16	308	324
West Jackson	500	14	453	467
Alexander	750	87	628	715
Junior High Schools				
Merry Jr. High	700 (+120)[4]	752	0	752
Tigrett Jr. High	725	0	699	699
Jackson Jr. High	650	1	431	432
High Schools				
Merry Senior High	—	590	0	590
Jackson Senior High	—	1	847	848
		3,194	4,610	7,804

[3] These enrollment figures are from Plaintiffs' Exhibit 26 (A. 359-364); building capacity figures are from A. 81-89, 143.

[4] The board decided in the Spring of 1965 to construct 4 new rooms to accommodate 120 more pupils at Merry.

In September 1964, when the plan was beginning its second year of operation, the Negro plaintiffs filed a Motion for Further Relief and to Add Parties in which they attacked the administration of the plan's transfer provisions as racially discriminatory and again charged that the attendance zones were gerrymandered (A. 51). Twenty-seven Negro children who complained that they had been denied transfer to white schools were permitted to intervene as plaintiffs, and the court ruled that plaintiffs could reopen the gerrymandering issue, as well as a faculty desegregation prayer which had previously been deferred (Pretrial order of 9/28/64; A. 92). The board filed a map (reproduced at A. 105) proposing zones for the three junior high schools and requested the court's approval (A. 104-105). Plaintiffs objected that the zone lines were drawn to perpetuate racial segregation and asked that the board be ordered to present new zones (A. 106). By a further motion plaintiffs sought the desegregation of all remaining grades in September 1965, and the elimination of discrimination in teacher in-service training programs and extracurricular activities (A. 109). The district court heard evidence on these matters on May 28 and June 18, 1965 (A. 126-358).

The Superintendent of Schools, Mr. C. J. Huckaba, testified that the elementary and junior high school zones were prepared by considering such factors as the location of the schools, the size of the buildings, the location of the children and an effort to fit the number of students to the capacity of the schools (A. 132). The petitioners presented two experts in the field of education who testified that the elementary and junior high school zones proposed by the board were racially gerrymandered to achieve a high degree of racial segregation. Petitioners' experts were Dr. Roger W. Bardwell, then Superintendent of Schools

of Elk Grove Township, Illinois, and Mr. Merle G. Herman, then Assistant Superintendent of Schools in Villa Park, Illinois.[5] Dr. Bardwell and Mr. Herman conducted a study (Plaintiffs' Exhibit No. 12) which was "designed to discover if the school zone lines . . . have been so drawn to obstruct the racial integration of the city's schools" and also to answer "whether the free transfer policy as administered has fostered additional segregation in the schools" (Exhibit 12, Introduction). The experts prepared a series of exhibits, consisting of plastic overlay maps which may be viewed in booklet form or projected on a screen by an overhead projector (Plaintiffs' Exhibits 12-21). The exhibits locate all pupils attending the schools by race on maps showing the schools and zone lines. The procedure used in preparing the exhibits was a standard method which Dr. Bardwell said he used in presenting similar data to his own Board of Education (A. 213). Dr. Bardwell and Mr. Herman reached the following "conclusion" in their study (Exhibit 12):

> "These exhibits represent an actual picture of the total elementary school population and the total junior

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[5] Dr. Bardwell's qualifications included B.S., M.S., and Ph.D. degrees from the University of Wisconsin in public school administration, fifteen years' experience in school administration, and substantial experience in school building planning and zoning. The school district where he had been superintendent five years was approximately the same size as the Jackson system (A. 207-208).

Mr. Herman's qualifications included a B.A. from McKendree College, and an M.A. and completion of most doctoral requirements at Washington University in St. Louis. His experience included three years' public school teaching, seven years' public school administration, and ten years college teaching in the field of education. During the period in which he was a college faculty member, he participated in many school surveys in a number of different states, including zoning problems as part of those surveys. The system where he was Assistant Superintendent was also approximately the same size as the Jackson City school system (A. 246-247).

high school population located on maps as near to the pupil's actual residence as possible. Elementary school zone lines have also been indicated, as well as two exhibits (Nos. V and VI) which depict the proposed junior high school boundaries. It is possible to graphically examine the actual school zoning and attendance situation in Jackson, Tennessee.

"Examination of this situation reveals:

(1) That elementary school attendance zones have been gerrymandered to create racially segregated elementary schools.

(2) Proposed junior high school attendance zones are also drawn to perpetuate racially segregated schools at the junior high schools, grades 7, 8 and 9.

(3) The present transfer policy seems to mitigate against desegregation of the Jackson schools. Large number of white children living in predominantly negro school zones have been permitted to transfer out of these zones to white or predominantly white schools."

The three junior high schools in Jackson had all been constructed during the period after 1955 during which the Board was operating a compulsory segregated school system contrary to the decision in the *School Segregation Cases* (A. 232). Tigrett Jr. High, formerly all-white, is in the western part of Jackson; Merry, still all-Negro, is in the center of town; and Jackson Jr. High, formerly all-white, is in the southeastern part of the city (A. 378). The zone designated for the all-Negro Merry Junior High School is an irregularly shaped area, described as "sort of an hour glass shape," with a wide top, narrow center, and

wide bottom (A. 290). The lines were drawn "consistently between the Negro and white populations" (A. 291) and the Merry zone thus included most of the Negro junior high students but very few white students. The Bardwell-Herman study concluded "that the boundary zones for junior high school attendance have been drawn with the goal in mind to preserve racially segregated junior high schools to a large degree" (Plaintiffs' Exhibit 12, see text accompanying Exhibit V).

In developing these zones, as well as the elementary zones, the superintendent of schools apparently did not undertake to find out how many junior high and elementary students there were in the city and attempt to match the numbers of students to the capacities of the respective schools, in spite of affirming that he used educational considerations such as capacity of schools in formulating the zones. The only evidence of a count of students which he was able to offer was a racial residential census of all children aged 1-18 in the city, and not a count of relevant age groups for junior high school and elementary school zone planning (A. 129, 141, 145-146, 155, 162, 167, 182-183).

Analyzing a racial residential map of the city showing the locations of the residences, and the race, of all junior high students in the school system (Trial Exhibit 19, A. 211), plaintiffs' educational expert Merle Herman concluded with regard to the junior high school zones: "There seems to be a very distinct tendency for the lines to follow the residences of Negroes and whites—in other words, separating the two. Where there is a large Negro population, there tend to be lines drawn to maintain segregation in the schools that serve those areas" (A. 250).

After the desegregated junior high school zones were announced for the following year in late 1964, and after

the school system had discovered from the 1964-65 enrollment figures that all-Negro Merry Junior High School, which then accommodated all but one of the Negro junior high school students in the city, was over capacity, the Board of Commissioners decided in the spring of 1965 to construct four additional classrooms at Merry so as to increase its capacity by 120 (A. 143, 184). This decision was made despite the facts that (1) *the enrollments of the two previously all-white junior high schools were approximately 300 students under capacity,* and (2) *the elementary school enrollment figures indicated that total junior high enrollment for the system would remain constant at about 100 students above the present enrollment for at least the next four years* (A. 143, 259-260).

When asked whether based on his experience no white children could be expected to enroll in Merry Junior High School and would it not therefore remain all-Negro, the Superintendent of Schools said, "Judging on the basis of what has happened up to now, that might be the case. . . . I imagine it will be predominantly Negro" (A. 185-186). He also expected that the small number of Negro students from the other two zones of the heretofore all-white junior high schools would continue coming to Merry, something the board's transfer policy would encourage (A. 186). The superintendent attempted to justify the construction of an addition to Merry Junior High by pointing out that all-Negro Merry Senior High School (in the same building), was growing and might need some of the rooms presently used by the junior high school. *But he also admitted that the all-white senior high school (not yet then desegregated) was 249 students under capacity* (A. 186).

With respect to the elementary schools, Dr. Bardwell testified that his analysis showed that "if geography were the main criterion for the zoning of the schools, why most

all of the schools would be integrated with the exception of Highland Park, and Lincoln would be predominantly Negro, but the balance of the schools would be integrated to a much greater degree than they are" (A. 219-220; see also, Plaintiffs' Exhibit 12, text accompanying Exhibit VII).

Dr. Bardwell was unequivocal in his observation about the board's proposed zones:

> I said that the boundary lines were drawn so that the majority of the schools remained highly segregated. That was my conclusion. (A. 236)

Mr. Herman agreed (A. 254):

> Well, the elementary school lines are built in such a way that they tend to promote segregation. One can never deal with the motivation behind them. It is just an apparent type of thing that strikes you when you look at the information that we have put together.

Plaintiffs proposed a specific plan for the junior high schools which would have produced three integrated junior high schools. Plaintiffs' educational expert Merle Herman explained that a standard basis for drawing junior high school zones was the "feeder" principle. By this principle, junior high school zones are based on elementary school zones and are composed by clustering several such zones so that all students from the same elementary school go on to attend the same junior high school (A. 248-251, 255, 293-296).

Mr. Herman concluded that using the accepted "feeder" principle, the existing elementary schools in the city were located so that they could be conveniently clustered into

zones to produce three completely integrated junior high schools. The proposed feeder zoning plan was: (1) Parkview (white), Washington-Douglass (Negro), and Whitehall (white) elementary school zones to constitute the zone for Jackson Junior High School; (2) Highland Park (white), West Jackson (white), and South Jackson (Negro) elementary school zones to be the zone for Tigrett Junior High School; and (3) Alexander (white) and Lincoln (Negro) elementary school zones to be the zone for Merry Junior High School (A. 255, 293-296). Each elementary school is located conveniently to the proposed junior high school, and the capacities of the elementary schools were matched to the junior high schools (A. 255, 293-296). Mr. Herman concluded that by drawing the zones in accordance with the "feeder" principle, "the junior high school zones would be developed objectively, without regard to the racial character of the neighborhood" and "from an educational point of view, it would be sound" (A. 255).

Transfer Policy. The original plan of desegregation approved by the district court in 1963 (A. 371-372) provided that any transfer policy could be adopted as long as it did not have as its purpose the delay of desegregation. The district court found in 1965 that the school system had administered its transfer policy in the following manner: "They have allowed white pupils as a matter of course to attend schools, outside of their unitary zones, in which white pupils predominate, and have allowed Negro pupils as a matter of course to attend schools, outside of their unitary zones, attended only by Negroes but they have denied Negroes (and specifically intervening plaintiffs) the right to attend predominantly white schools outside of their unitary zones" (A. 372). In other words, the board was using, up through 1965, the "minority to majority" racial

transfer policy which had been condemned by this Court in 1963 in *Goss* v. *Board of Education*, 373 U.S. 683 (1963).[6]

Dr. Bardwell pointed out that where the Board had zoned all of the schools in such a way that their enrollments were conspicuously either predominantly white or almost all-Negro, and thus preserved the racial identity of the schools as they were under the dual school system, the availability of the free transfer option caused the racial identification of the schools to become even more pronounced by permitting the remaining students of the minority race in each school to transfer out. He indicated that where the school system had conferred racial identities on individual schools, it would be expected that minority students would transfer out of those schools because they were of the minority race and this was confirmed by the fact of an abnormally large number of transfers within the system (A. 223-224, 238-239). Merle Herman pointed out that the effect of a free transfer system superimposed on racially identified schools would operate "to maintain whatever the attitude structure is of the people who have children in those schools: and the attitude toward integration was obviously unfavorable because of the large number of minority to majority transfers (A. 249-250). He explained: "If zoning would not accomplish what some people might consider to be a proper solution to their own personal problems, they could then use transfer as a means by which they could solve their problems" (A. 250). Mr.

[6] Other aspects of the system's transfer policy were also administered in accordance with the principle of a segregated dual school system. The Jackson city school system admitted 385 students from surrounding Madison County and all white students were assigned to schools which were all-white or predominantly white and all Negro students to schools which were all-Negro (A. 255-257; Plaintiffs' Exhibit 20). County transferees of the predominant race in any particular school were apparently given priority in assignment over city students of a minority race who actually resided in the zone of that school (A. 256-257).

Herman concluded that since "It is an accepted fact here, I think, that white children attend white schools and Negro children attend Negro schools," that even though a completely open transfer policy was superimposed on the board's junior high school zones based on race, "segregation will continue to exist" (A. 253).

The Bardwell-Herman study of the junior high school zones indicated how the transfer plan operated with the zones to achieve segregation. As stated in the study (Plaintiffs' Exhibit 12, text accompanying Exhibit VI):

> This exhibit indicates the possibility of using an open transfer plan to promote an almost completely segregated school system at the junior high level because of the gerrymandered school zone lines and relatively few children to be granted transfer to achieve a high degree of segregation.

This "high degree of segregation" was achieved notwithstanding the fact that the white junior high school population "distributes itself over the entire city" because the Negro junior high population "distributes itself in the center of the city" (Plaintiffs' Exhibit No. 12, text accompanying Exhibit V). When most of the Negroes in Jackson were zoned into Merry Junior High zone, and the few whites living in the zone were permitted to transfer out, an all-Negro school was the result.

The district court rendered an opinion July 30, 1965 (A. 365; 244 F. Supp. 353), and an order on August 11, 1965 (A. 390). The court held that the board's transfer policy had been administered in an unconstitutional manner in violation of *Goss* v. *Board of Education*, 373 U.S. 683 (1963) (A. 372). The court ordered that if the defendants continue the policy of allowing all pupils transfers to

schools where they will be in a racial majority, they must also allow pupils to transfer to attend schools where they will be in a racial minority (A. 392-393). The court also ordered that each pupil be required to register in the school in his zone before applying for a transfer (A. 393).

Judge Brown ruled that some of the elementary school zones "appear to be gerrymandered" (A. 393) and ordered that boundaries separating three pairs of white and Negro schools be adjusted. Each adjustment resulted in placing adidtional Negro pupils into formerly white zones. But, the court rejected the claim that junior high school zones were gerrymandered and approved the board's proposed zones (A. 394).

The court ordered that desegregation be accelerated to cover all junior high grades in 1965-66 and all grades in 1966-67 (A. 394). Relief requiring integration of faculties was denied, except that the court ruled that in 1966-67 the board should seek teachers to volunteer for non-segregated assignments (A. 394). Jurisdiction of the cause was retained "pending full implementation of desegregation" (A. 396).

Judge Brown's opinion began by stating that the law was not clear "as to whether the Constitution requires only an abolition of compulsory segregation based on race or requires something more" (A. 366). He thought this a question that "must first be answered before we can deal with the assignment and transfer issue and the gerrymandering issue" (A. 366), and after some discussion, decided that segregation resulting from "purely voluntary choice" or resulting from "'honestly' arrived at geographical zoning" did not violate the Constitution: "the Constitution does not require integration . . . it only requires the abolition of compulsory segregation based on race" (A. 371). The court stated its reliance upon the

famous dictum of *Briggs* v. *Elliott*, 132 F. Supp. 776 (E.D. S.C. 1955).

Reasoning from this premise, Judge Brown disregarded the testimony and desegregation proposals of plaintiffs' experts *because they sought "integration"*:

> . . . [T]he value of the testimony of these experts was undercut by the fact that they assumed that it is the duty of defendants to maximize integration because of educational benefits that would, in their opinion, flow therefrom. The value of their testimony with respect to elementary schools was further somewhat undercut because their maps were aimed to show the amount of *de facto* segregation that has resulted after two years under the plan. However, in view of voluntary transfers by white and Negro pupils, the degree of actual segregation in these schools does not itself show that the zones are gerrymandered. The value of the testimony of these experts with respect to junior high schools was somewhat undercut because they not only again assumed a duty to maximize integration but also assumed that defendants had the duty to adopt a "feeder" system whereby certain elementary schools would send their graduates only to a particular junior high. (A. 376)

The Negro plaintiffs appealed and the Court of Appeals for the Sixth Circuit affirmed except with respect to the faculty segregation issue, on July 21, 1967 (A. 397). The court below asserted that the:

> . . . Fourteenth Amendment did not command compulsory integration of all of the schools regardless of an honestly composed unitary neighborhood system and a freedom of choice plan. (A. 399)

The court stated that the *Brown* decision prohibits "only enforced segregation" (*id.*), and that it would apply the same rule it had applied in a Cincinnati case where the schools were desegregated long before *Brown* (A. 399-400). It said:

> However ugly and evil the biracial school systems appear in contemporary thinking, they were, as *Jefferson, supra* [372 F.2d 836 (5th Cir. 1966)] concedes, de jure and were once found lawful in *Plessy* v. *Ferguson,* 163 U.S. 537 (1896), and such was the law for 58 years thereafter. To apply a disparate rule because these early systems are now forbidden by *Brown* would be in the nature of imposing a judicial Bill of Attainder. (A. 400-401)

The court then stated its approval of the trial judge's decision that the junior high school zones were not gerrymandered. The trial court decision refusing relief on the faculty desegregation question was reversed and the issue remanded for reconsideration in light of *Bradley* v. *School Board,* 382 U.S. 103 (1965), and *Rogers* v. *Paul,* 382 U.S. 198 (1965).

The record herein contains no enrollment figures indicating the results of the plan's operation while the case has been pending on appeal. However, published data reflects that during the 1966-67 school term, Jackson's five Negro schools remained all-Negro, while 475 Negro students attended racially mixed schools and 2,730 remained in all-Negro schools.[7] In the current 1967-68 school year, 615

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[7] Respondents' Brief in Opposition to Certiorari, p. 4, filed November 1967; see also, State of Tennessee, Department of Education, Equal Educational Opportunities Program, *Fall 1966 Desegregation Report on Tennessee's Public Elementary and Secondary Schools* (compiled from reports to the U. S. Office of Education).

Negro students attend mixed classes while 2,613 are in all-Negro schools.[8]

Summary of Argument

I. *Brown* v. *Board of Education,* 347 U.S. 483 (1954); 349 U.S. 294 (1955), directs the district courts to consider the adequacy of school desegregation plans to eliminate racial discrimination in public school systems. School officials have an affirmative duty to initiate desegregation. *Cooper* v. *Aaron,* 358 U.S. 1 (1958).

The courts below applied an erroneous legal standard in appraising the Jackson Board's desegregation plans by rejecting the argument of petitioners that the board had an affirmative duty to abolish the dual system. School segregation plans should be judged by whether they are reasonably designed to convert dual systems into unitary systems. Adequate plans should desegregate both formerly all-white and formerly all-Negro schools. Jackson's plan left the all-Negro schools intact while permitting a few Negroes to enter formerly all white schools. The courts below appraised the plan and the evidence by reference to a misconception of the applicable law which rejected the notion that school boards are affirmatively obligated to disestablish patterns created by the segregation laws and practices. Other courts of appeals have applied more appropriate standards for appraising desegregation plans. *United States* v. *Jefferson County Board of Education,* 372 F.2d 847 (5th Cir. 1966), affrmed en banc, 380 F.2d 385 (5th Cir. 1967), cert. den. 389 U.S. 840. *Kelley* v. *The Altheimer Arkansas Public School District No. 22,* 378 F.2d 483 (8th Cir. 1967); *Board of Education of Okla-*

[8] *Ibid.*

homa City Public Schools v. *Dowell*, 375 F.2d 158 (10th Cir. 1967), cert. den. 387 U.S. 931.

II. The desegregation plan proposed for Jackson, Tennessee, including particularly the junior high school zoning arrangements and the transfer plan, was not reasonably designed to abolish the dual school system. Plaintiffs made an unrebutted showing that the junior high school zones were racially gerrymandered, and that the transfer policy operated with the racial zones to insure a high degree of segregation. The school board's construction policies complemented the zoning arrangements to promote segregation. Having found gerrymandering at the elementary school level, the trial court should have treated the oddly-shaped junior high school zones with great suspicion. Plaintiffs proposed feeder plan would have desegregated each of the city's junior high schools. The court should have ordered this plan or some other arrangement equally likely to desegregate the system. If the record is not deemed sufficient to justify the immediate disapproval of the board's plan, at the least the trial court should be directed to reappraise the case in view of the appropriate standard, e.g. the requirement that school boards take affirmative steps to abolish the dual system.

ARGUMENT

Introduction

This case presents important questions relating to the implementation of this Court's decision that racial segregation in the public schools violates the Equal Protection Clause of the Fourteenth Amendment. *Brown* v. *Board of Education*, 347 U.S. 483 (1954); 349 U.S. 294 (1955). In the second *Brown* decision, *supra*, the Court directed that the lower federal courts "consider the adequacy of any plans that the defendants may propose . . . to effectuate a transition to a racially nondiscriminatory school system". (349 U.S. at 301). Subsequently the Court emphasized the affirmative duty of school authorities, saying that they "were thus duty bound to devote every effort toward initiating desegregation and bringing about the elimination of racial discrimination in the public school system". *Cooper* v. *Aaron*, 358 U.S. 1, 7 (1958). The courts below, in the instant case, approved a desegregation plan (proposed by local school officers and objected to by Negro parents) holding that the plan fully complied with the board's obligations to implement *Brown, supra*. Petitioners submit, first, that both courts below applied an improperly restrictive legal standard for judging the adequacy of the desegregation plan, by rejecting the idea that equity courts are obliged to require affirmative efforts to abolish the dual segregated school system. Second, it is urged that the Jackson plan was demonstrated to be inadequate because the school zoning and pupil transfer arrangements were not reasonably calculated to abolish the dual system which had been created under segregation laws and practices. Alternately, it is submitted, that if the Court does not find the plan inadequate on this record, at the least

the cause must be remanded to the trial court for reappraisal of the plan's features using a correct legal standard.

I.

The Courts Below Applied an Erroneous Legal Standard in Reviewing the Adequacy of the Jackson Desegregation Plan.

Both courts below deemed the definition of the basic constitutional standard to be applied in reviewing a proposed desegregation plan to be the decisive matter at issue. Petitioners' position on this question has been variously stated and characterized by respondents and by the courts below; we state it on our own terms in the following paragraph.

Because the Jackson school officials have established an unconstitutional dual system of segregated schools, it is their affirmative duty to abolish the dual system. Abolishing the dual system involves desegregating the all-Negro schools as well as the all-white schools. The *Brown* decision held that "segregation of children in public schools solely on the basis of race . . . deprive[s] the children of the minority group of equal educational opportunities." (347 U.S. at 493). "The governmental objective of ['converting the dual system of separate schools for Negroes and whites into a unitary system'] . . . is—educational opportunities on equal terms to all." [9] "The criterion for determining the validity of a provision in a school desegregation plan is whether the provision is reasonably related to accomplishing this objective." [10] It is not suffi-

[9] *United States* v. *Jefferson County Board of Education*, 380 F.2d 385, 390 (5th Cir. 1967).

[10] *Id.*

cient for a court to consider merely the abstract constitutionality or reasonableness of a desegregation plan's provisions. The Court should judge whether, when viewed in a practical context, the provisions are reasonably calculated to abolish the dual system of white and Negro schools speedily and effectively and to the greatest extent feasible in the circumstances. Finally, the plan must be tested in actual operation "by measuring the performance —not merely the promised performance—of school boards in carrying out their constitutional obligation 'to disestablish dual, racially segregated school systems and to achieve substantial integration within such systems' ".[11]

We urge that these propositions are well supported by decisions in the lower courts which have been congenial to implementation of the *Brown* decision. The contrary position of the courts below should be repudiated. The essence of the matter is that the courts below have declined to accept the argument that the school board has an affirmative duty to disestablish the segregated system.

The District Judge emphasized the well-known dictum enunciated by Judge Parker in *Briggs* v. *Elliott*, 132 F. Supp. 776 (E.D.S.C. 1955) six weeks after the second *Brown* decision, that the Constitution "does not require integration". *Briggs* sounded the call for resistance to *Brown*. It was an attempt to narrow the scope of the opinion so as to almost deprive it of meaning. *Briggs* has been argued as the supporting foundation for almost every evasive effort to subvert *Brown* which has come before the courts. It has never been recognized in this Court, and has quite properly been repudiated as inconsistent with *Brown* in numerous recent cases in the courts of ap-

[11] *United States* v. *Jefferson County Board of Education*, 372 F.2d 847, 895 (5th Cir. 1966), affirmed en banc, 380 F.2d 385 (5th Cir. 1967), cert. den. 389 U.S. 840 (1967).

peals. See e.g. *United States* v. *Jefferson County Board of Education, supra,* 372 F.2d at 846, 861-873; 380 F.2d at 389; *Kemp* v. *Beasley,* —— F.2d —— (8th Cir. No. 19,107, Jan. 9, 1968); *Kelley* v. *The Altheimer, Arkansas, Public School District No. 22,* 378 F.2d 483, 488 (8th Cir. 1967).

The holdings by the trial court reject the idea of an affirmative obligation by the school board to abolish the dual system in several ways. The court used its conclusion that the Constitution did not require "integration" to justify its disregard of the careful study made by petitioners' expert witnesses who testified that the Jackson school zones were racially gerrymandered. Their presentation was disregarded because the Court thought their testimony assumed the desirability of "integration". Similarly, the court, took the view that school board discretion in establishing attendance zones "should not be overridden unless it constitutes a clear abuse of this discretion" (A. 46). The Court thus limited its inquiry about the zones to a search for an abuse of discretion without any expressed indication of concern for the practical impact of the proposed zones on the separation of the races in the school system. Uncontradicted evidence that the zone lines maximized the racial separation was disregarded.

The trial court's standard for appraising the desegregation plan was seriously in error in that it failed to recognize that a prime objective of the desegregation plan must be to accomplish the actual desegregation of the schools and the elimination of the dual system. The trial court's view focused entirely on whether the desegregation plan used non-racial and non-discriminatory mechanisms for assigning pupils and disregarded the practical impact of these rules on the pre-existing dual system. A principal feature of the dual system is the existence of a number of all-Negro schools. Obviously abolition of the dual sys-

tem of separate white and Negro schools should include desegregation of both sets of schools and the elimination of racially identifiable schools. But the Court approved a plan which was manifestly designed to preserve the all-Negro schools intact, and rejected petitioners' experts' proposal to desegregate all junior high schools by a feeder system, saying that their plan was intended to "integrate" the schools.

The Court of Appeals also characterized petitioners' arguments as a demand for "compulsory integration". The Court said it was unfair and impermissible to impose a duty on the Jackson school board which had established segregation under the aegis of *Plessy* v. *Ferguson*, 163 U.S. 537 (1896), that was not imposed on a school board that had no history of compulsory segregation. By so defining the problem the Sixth Circuit also refused to follow the legal rule stated in *United States* v. *Jefferson County Board of Education, supra*, that there is an affirmative duty placed on school boards to devise plans to abolish the dual system.

The Court of Appeals approved the trial judge's opinion which it said "concludes that the Fourteenth Amendment did not command compulsory integration of all of the schools regardless of an honestly composed unitary neighborhood system and a freedom of choice plan" (A. 399). We think this formulation mistakes the crucial issues. The vital inquiry in appraising a plan intended to implement the *Brown* decision is not merely whether school attendance zones are demonstrably dishonest. The central inquiry ought to be whether the zones are reasonably designed to abolish the segregated system. If the Board's duty is to "devote every effort toward initiating desegregation" (*Cooper* v. *Aaron, supra*, 358 U.S. at 7), surely this duty must include something beyond merely refrain-

ing from drawing dishonest, plainly arbitrary, or segregationist zones. There is a duty to make a reasonable effort to actually desegregate those schools which the state previously established and maintained for one race only.

Pupil transfer rules adopted as part of a desegregation plan should also be required to meet a similar test. In this case the trial court ruled that transfer applications must be granted to all without discrimination and enjoined the board's former practices which it said were racially discriminatory. The court left it open to the Jackson system to continue a transfer arrangement by which every white pupil zoned into a Negro school area transferred out of his zone to a white school and thus perpetuated the all-Negro schools. Experience showed that every white child who was zoned into a Negro school had sought and been granted a transfer to a white school. Everyone —all the parties and the courts below—fully understood and expected that this pattern, which has held true throughout the south, would continue and that the all-Negro schools would remain all-Negro notwithstanding the fact that white pupils did live in the zones designated for these schools. It was error, we submit, for the courts below to approve a transfer arrangement which was thus manifestly designed and expected to defeat the objective of eliminating the dual system.

The appropriate standard for appraising desegregation plans is illuminated by *Board of Education of Oklahoma City Public Schools* v. *Dowell et al.*, 375 F.2d 158 (10th Cir., 1967), *cert. den.* 387 U.S. 931, affirming *Dowell et al.* v. *School Board of Oklahoma City Public Schools*, 219 F. Supp. 427 (W.D. Okla. 1963) and 244 F. Supp. 971 (W.D. Okla. 1965). The Court of Appeals for the Tenth Circuit was confronted with a school system which had announced a formal desegregation plan by unitary zoning in 1955.

Nevertheless, the unitary zoning plan had preserved a number of all-Negro schools because of racially designed building locations, racial residential segregation, and a racial "minority to majority" transfer plan. At the time of the final district court decision in 1965, 80% of the Negro students in the system were still attending schools which were all-Negro or at least 95% Negro.

The Oklahoma district court, after ordering a study by a panel of independent educational administrators, required the school system to take specific and affirmative actions recommended by the panel to begin the process of disestablishing segregation, including: (1) a consolidation of the attendance districts and changes in the grade structures of two pairs of nearby six-year secondary schools so as to completely integrate the four schools, and (2) adoption of a transfer plan by which any student who was in the racial majority in any school in the system could transfer as a matter of right to any other school in which he would be in the racial minority. The Tenth Circuit held that "under the factual situation here we have no hesitancy in sustaining the trial court's authority to compel the board to take specific action in compliance with the decree of the court so long as such compelled action can be said to be necessary for the elimination of the unconstitutional evils pointed out in the court's decree." 375 F.2d at 166.

Judge Lewis, concurring, explained the Court's view that since compulsion was used to maintain the system of segregation, the compulsion inherent in school assignment policies could properly be used to disestablish segregation:

> I have no quarrel with the statement that forced integration when viewed as an end in itself is not a compulsion of the Fourteenth Amendment. But any claimed right to disassociation in the public schools

must fail and fall. If desegregation of the races is to be accomplished in the public schools, forced association must result, not as the end sought but as the path to elimination of discrimination. And, to me, the argument that racial discrimination cannot be eliminated through factors of judicial consideration that are based upon race itself is completely self-denying. The problem arose through consideration of race; it may now be approached through similar but enlightened consideration. 375 F.2d at 169.

In the second *Brown* decision, 349 U.S. 294 (1955), this Court directed that "in fashioning and effectuating the decrees [requiring desegregation], the courts will be guided by equitable principles." 349 U.S. at 300. The general equity principle is that there is no wrong without a remedy, and therefore equity courts have broad power to provide relief and are obligated to do so. The test of the propriety of measures adopted by such courts is whether the required remedial action reasonably tends to dissipate the effects of the condemned actions and to prevent their continuance. *Louisiana* v. *United States*, 380 U.S. 145 (1965). An example of the application of this equitable principle is in the antitrust area, where it has been held to require the complete dissolution of large national business enterprises which had been created by illegal monopolization, when there was no other way to counteract the effects of such illegal monopolization. *United States* v. *Standard Oil Co.*, 221 U.S. 1 (1910); *Schine Chain Theatres* v. *United States*, 334 U.S. 110 (1948). Similarly, it has been held to require that federal courts supervise the redrawing of state legislative districts when there is no other way to counteract the effects of population disparities in existing state legislative districts. *Reynolds* v. *Sims*, 377 U.S. 533 (1964).

As indicated above, decisions of the Courts of Appeals for the Fifth, Eighth, and Tenth Circuits have held that this equitable doctrine, as applied to the problem of remedy for the unconstitutional creation and operation of a segregated public school system, requires a school board to undertake affirmative action purposed to disestablish segregation completely, and that the standard for determining the completion of desegregation is that the formerly Negro schools must cease being identifiable as Negro schools. The creation and operation of separate schools for Negroes was the condemned action, and the test of the propriety of remedial action to be required by a court is thus whether it will disestablish the existence of the Negro schools, i.e. integrate Negro students.

This Court suggested in the second *Brown* decision the scope of school system policies which would have to be changed in order to disestablish segregation, when it said that "to effectuate this interest may call for elimination of a variety of obstacles," and directed the district courts supervising the re-organization of dual school systems to "consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts, and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems." 349 U.S. at 300-301.

Since this Court's announcement of the second *Brown* decision in 1955, the lower federal courts have considered and ordered a variety of specific remedies which constitute affirmative actions and policies purposed to disestablish

segregation.[12] See, e.g., *United States* v. *Jefferson County, Board of Education, supra; Kelley* v. *Altheimer, supra; Dowell* v. *School Board of Oklahoma City, supra; Carr* v. *Montgomery County Board of Education (Ala.)*, 253 F. Supp. 306 (M.D. Ala. 1966); *Moses* v. *Washington Parish School Board (La.)*, E.D. La., Civil No. 15973, October 19, 1967; *Coppedge* v. *Franklin County Board of Education (N. Car.)*, 273 F. Supp. 289 (E.D.N.C. 1967) appeal pending; *Corbin* v. *County School Board of Loudoun County (Va.)*, E.D. Va., Civil No. 2737, August 27, 1967; *Braxton* v. *Board of Public Instruction of Duval County (Fla.)*, M.D. Fla., Civil No. 4598, January 24, 1967.

With regard to the "revision of school districts and attendance areas," ordered by *Brown II* the Court of Appeals for the Fifth Circuit held in *Jefferson County, supra:*

> If school officials in any district should find that their district still has segregated faculties and schools or only token integration, their affirmative duty to take corrective action requires them to try an alternative to a freedom of choice plan, such as a geographic attendance plan, a combination of the two, the Princeton plan, or some other acceptable substitute, perhaps aided by an educational park. 372 F.2d at 895-896.

The Court thus made it clear that the school board's assignment transfer, building utilization, new construction, and other policies must be specifically designed to integrate the system and eliminate identifiable Negro schools.

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[12] A survey of various types of remedies for the disestablishment of segregation is contained in the Report of the United States Commission on Civil Rights, "Racial Isolation in the Public Schools," (1967), Vol. I, pp. 140-183. This survey was commended to the school board and the district court by the Court of Appeals for the Eighth Circuit in *Kemp* v. *Beasley II*, No. 19,017, January 9, 1968, slip opinion, p. 9.

The Court of Appeals for the Eighth Circuit adopted a similar provisions in its decree in *Kelley* v. *Altheimer, supra.*

II.

The Desegregation Plan Approved by the Lower Courts Is Inadequate in That Petitioners Demonstrated That the Zoning and Transfer Arrangements Were Not Designed to Abolish the Dual System.

The school desegregation plan proposed by the Jackson, Tennessee board, including particularly the junior high school zoning arrangements and the transfer plan, fail to meet a minimum standard of adequacy under *Brown* v. *Board of Education,* 349 U.S. 294. The Jackson plan should not have been approved because there was no reasonable likelihood that the plan could effectively abolish the dual system of schools.

Petitioners' evidence showed without dispute that the junior high school zones proposed for the system were drawn so as to preserve racially segregated junior high schools to a large degree. They proposed a plan which would have desegregated all three junior high schools. There was no evidence which contradicted or impaired the value of plaintiffs' exhibit No. 20 (the same map as Exhibit V within the booklet marked overall Exhibit No. 12). This map depicts all of the Negro and white pupils of junior high school age in the city by race (Negroes in blue, whites in red dots) and shows how they are distributed in the city. The overlay containing the junior high school zone lines shows plainly how a strangely shaped zone for the all-Negro Merry school has been designed by the school authorities to include most of the Negroes in the city and exclude most of the whites. The racial effect of the junior high school zones is readily apparent from an examination of Plaintiffs' Exhibit 20.

At the same time the school board proposed the junior high school zones it took steps to enlarge the all-Negro Merry Junior High School. This enlargement was plainly designed to accommodate all of the Negroes in the city at Merry, since Jackson Jr. High School had capacity for better than 200 more students than were enrolled there, and there was also excess capacity at Tigrett Junior High. The racial purpose of this construction is further shown by the fact that the board's projections indicated no expected large increase in the number of junior high school students in the next four years.

The location of the three junior high schools (all of which were opened in the years after *Brown* on a segregated basis), the enlargement of Merry Junior High to accommodate continued segregation, and the planning of school zones separating white and Negro populations, all make an unrebutted showing of school building and school zone planning to perpetuate segregation.

The board's free transfer device operates to permit an even greater degree of segregation than could be accomplished by the school zones. Plaintiffs' Exhibit 19 (the same maps as Exhibit VI within the booklet Exhibit 12) demonstrates how the use of the combination of gerrymandered zoning and an open transfer plan at the junior high level permits a high degree of segregation. The exhibit indicates on map overlays the location of the residences of pupils attending the three junior high schools. (Note that the exhibits were prepared based on data in December 1964 when the Junior High Schools were still segregated by compulsion. The respondents arguments that these exhibits are somehow based on an effort to prove *"de facto"* segregation are thus entirely specious.) Exhibit 19 shows how relatively few children had to be transferred out of their zones to maintain a high degree of racial

separation. As we have discussed above, all of the experience in Jackson, at the time this plan was proposed showed that white pupils would transfer out of the all Negro schools if free transfers were permitted, thus leaving the all-Negro school intact as a segregated school.

The district court found that there was gerrymandering with respect to the zone lines of several elementary schools proposed by the respondent board. The court ordered that these zones be modified because of this apparent gerrymandering. Given this finding that the respondent board had once engaged in preparing school zone lines to perpetuate segregation, it was incumbent upon the district court to scrutinize the newly proposed junior high school zones all the more carefully. We submit that the trial judge, having once found that the board was guilty of gerrymandering with respect to certain proposed zones, erred in failing to consider the irregularly shaped zones proposed by the board for junior high schools to be greatly suspect. It is submitted that the evidence plainly showed the manipulation of school location, construction, and zoning policies to maintain a high degree of segregation.[13] This was sufficient to require disapproval of the board's proposed plan and for the trial court to have ordered the adoption of the proposed feeder plan suggested by plaintiffs' experts as a method of actually desegregating all three junior high schools within the framework of the existing building locations, and grade structures, and build-

[13] The availability of a transfer option, however "free", does not justify the continued practice of school assignments based on racially gerrymandered zone lines. See *Wheeler* v. *Durham City Board of Education*, 346 F.2d 768 (4th Cir. 1965) (Students assigned by racially gerrymandered zones, then granted right to transfer out. Held: "Channeling pupils into schools by a method involving discriminatory practices and then requiring them, or even permitting them, to extricate themselves from situations thus illegally created, will not be approved." 346 F.2d at 772).

ing capacities. If this feeder proposal was not adopted, at the least the court should have required some alternative method of assignment to be proposed by the board which was equally as likely as the feeder method to actually disestablish the dual system of junior high schools.

We urge that the evidence on this record is fully sufficient to justify this Court in ruling that the plan approved below was plainly inadequate under *Brown*. However, assuming *arguendo* that the record is not sufficient to support a ruling rejecting the plan as completely inadequate then the cause should be returned to the District Court for reappraisal in view of the proper standards for review of desegregation plans as discussed in part I of the argument, *supra*. The trial court's view of the evidence, the alternative proprosals made by petitioners' experts, and the entire gerrymandering and transfer plan issues was influenced by the court's too restricted view of the constitutional requirement of desegregation.

CONCLUSION

It is respectfully submitted that the judgment of the court below should be reversed.

Respectfully submitted,

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SUPREME COURT, U. S.

In the Supreme Court of the United States

OCTOBER TERM, 1967.

No. 740.

BRENDA K. MONROE, *et al.*,

Petitioners,

v.

BOARD OF COMMISSIONERS OF THE CITY OF JACKSON, TENNESSEE, etc.,

Respondents.

BRIEF OF RESPONDENTS.

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In the Supreme Court of the United States

OCTOBER TERM, 1967.

No. 740.

BRENDA K. MONROE, *et al.*,

Petitioners,

v.

BOARD OF COMMISSIONERS OF THE CITY OF JACKSON, TENNESSEE, etc.,

Respondents.

BRIEF OF RESPONDENTS.

I.

COUNTER-STATEMENT OF QUESTIONS PRESENTED.

I. The City of Jackson School System is operating in a Constitutional manner within the meaning of *Brown v. Topeka School Board*, 347 U. S. 483; 349 U. S. 294.

The Petitioners say the answer is "No."

The Respondents and the lower Courts say the answer is "Yes."

IIA. Does the Fourteenth Amendment to the Constitution of the United States require compulsory racial mixing in public schools in the United States?

The Petitioners say the answer is "Yes."

The Respondents and the lower Courts say the answer is "No."

IIB. Does the Fourteenth Amendment require the imposition of State imposed integration to eliminate racial imbalance in schools—

a. in all States?

b. in only those States having segregation statutes in effect at the time of the decisions of this Court in *Brown v. School Board* (347 U. S. 483; 349 U. S. 294)?

The Petitioners say the answer is "Yes" to IIB(b).

The Respondents and the lower Courts say the answer is "No" to both alternatives.

IIC. Does the Fourteenth Amendment require State imposed integration to eliminate in public schools separation of races resulting from (a) neighborhood racial patterns, sometimes referred to as "de facto" segregation, or (b) from voluntary transfers under a free transfer plan fairly administered without regard to race?

The Petitioners say the answer is "Yes."

The Respondents and the lower Courts say the answer is "No."

II.

COUNTER-STATEMENT OF THE CASE.

The Petitioners will be referred to as Plaintiffs and the Respondents as Defendants hereafter in this brief.

The City of Jackson, Tennessee is a small Tennessee City (40,000) with a population division between white and Negro of approximately 70% white and 30% Negro. The school population is divided approximately 60% white and 40% Negro. The School System consists of eight elementary schools (1-6), three Junior High Schools (7-9) and two High Schools (10-12) (R. 34a, 35a). The District embraces the City Limits and is administered by the Board of Commissioners of the City of Jackson.

The record in this case is nearly three years old. This defendant desires to set forth at this point a current report on the progress of desegregation in Jackson, Tennessee

schools so the Court will have this advantage while reading the remainder of this brief.

1967-1968 RACIAL BREAKDOWN OF STUDENTS ATTENDING JACKSON CITY SCHOOLS [1]

Elementary Schools	White	Approx. %	Negro	Approx. %
Alexander School	522	76%	160	24%
Highland Park	778	99%	3	1%
Parkview	474	80%	112	20%
Lincoln	–0–	0	537	100%
South Jackson	–0–	0	475	100%
Washington-Douglass	–0–	0	413	100%
West Jackson	346	79%	94	21%
Whitehall	324	81%	72	18%
Junior High				
Tigrett Junior High	812	99%	7	1%
Jackson Junior High	349	72%	135	28%
Merry Junior High	–0–	0	640	100%
High Schools				
Jackson High	823	99%	30	1%
Merry High	–0–	0	545	100%

It is likewise considered desirable, early in this brief, to give the Court a complete picture of the Jackson, Tennessee Desegregation Plan in effect since August 11, 1965.

JACKSON, TENNESSEE PLAN OF DESEGREGATION.[2]

The essence of the plan under which the City of Jackson has operated its School System since September 1965, as modified by the District Court on August 11, 1965 and approved by the Court of Appeals (6th) is as follows:

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[1] Report to U. S. Office of Education 1967.

[2] Record references to Jackson's plan include original plan and Court modifications thereof. (R. 29a, 42a-44a; 45a-50a; 392a-396a; 402a-407a.)

Every school in the city has established for it a unitary geographic zone, based on appropriate factors without regard to race. The Junior High School zones were created on the basis of educational factors, using natural boundaries such as thoroughfares and railroads. While the Plaintiffs charge gerrymandering of the Junior High zoning boundaries there is no evidence whatever to support such charge. Both the Trial Court and the Sixth Circuit have considered the gerrymandering charge and rejected it. It is a reasonable assumption that Plaintiffs' experts would have objected to any boundary. This defendant, at any event, does not believe this Court granted certiorari in this case just to look at a boundary line on a map which has already been approved by the District Court and the Sixth Circuit.

Every student, each year, is required to personally and physically enter the appropriate school building located in the unitary zone in which he lives and register in that school. This is compulsory. It is affirmative state action. Every student, white or Negro, has the absolute, unqualified right to attend the school in the zone in which he lives and if the student does nothing else on a voluntary basis that is the school the student *must* attend.

Any student, white or Negro, for reasons satisfactory to such student or parents, may apply for a transfer to any school zone in the system and the transfer is granted, except in the single situation where the school in such zone is at maximum capacity with children who live in such zone. This free transfer works in any racial direction and is administered without regard to race. If a Negro child wishes to transfer from the school located in the zone in which he lives to a predominantly white school or to a predominantly Negro school, regardless of the racial composition of the school in which registered, he or she

may do so. If a white child wishes to transfer, he has the same right. This is uniformly applied without regard to race.

The State action described above places every student physically within the school of the zone in which the student lives. That is where the student must attend as far as State action is concerned and that is where compulsion ends.

Any action to change that situation must come from the student and his or her parents. Every student, white or Negro, has the identical non-discriminatory right.

The voluntary, non-discriminatory exercise of the unrestricted transfer right within the City of Jackson schools has resulted in one out of six Negro children attending integrated schools while some schools remain all-Negro. There are no all-white schools remaining. While to this extent some *separation*[3] remains, it is not state imposed, it is not as a result of discrimination and it is not inevitably so.

> "This is not to say that appropriate transfer provisions, upon the parents request, consistent with sound school administration and not based upon any state-imposed racial conditions would fall. Likewise, we would have a different case here if the transfer provisions were unrestricted, allowing transfers to or from any school regardless of the race of the majority therein."

The above language is quoted from the decision of this Court in *Goss v. Board of Education*, 373 U. S. 683 and

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[3] The question of *separation* of the races as opposed to *segregation* of the races was before this Court at the time of the argument in *Brown 2*. (Appendix p. 170b.) It was clearly recognized in the discussion between the Court and Counsel that all-Negro schools could conceivably result even with the condemned state imposed segregation based on race completely eliminated.

is the foundation of the Jackson Transfer Plan, both the original plan and the plan acted on since the District Court decision of August 11, 1965. The District Court faulted the *application* of the transfer plan in the August 11, 1965 decision simply because *every* transfer application submitted by Negro students was not granted, nor of white students either, on grounds other than race. *Since August 11, 1965 every Negro student asking transfer has received approval of such transfer.* The Plaintiff cannot stand before this Court or the District Court *any* Negro student who has been denied a transfer since August 11, 1965.

In *Goss* this Court established the rule that

> "But no official transfer plan or provision of which racial segregation is the *inevitable* consequence may stand under the Fourteenth Amendment." (Italics supplied.)

Is segregation the "inevitable" consequence of the Jackson plan? Obviously it is not. Under the Jackson plan every Negro child in the City could, if they chose, transfer into integrated schools. Or every Negro child could transfer into all-Negro schools. The same option is available to white children. There is absolutely nothing *inevitable* about the plan.

As a practical matter in 1966-67 school year 475 Negro children attended integrated schools out of 3205 Negro children in the system.[4] In 1967-68 school year integration had progressed to 615 out of 3228 attending integrated classes.[5] It is probable that this progressive integration will continue until all-Negro schools disappear. This method of desegregation will eventually result in total integration as a by-product. Far more importantly,

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[4] 1966 Report to U. S. Office of Education.

[5] 1967 Report to U. S. Office of Education.

the *quality* of education in the Jackson School System receives minimal damage thereby. Everyone benefits from quality education.

Some authorities judge a plan by the question, "Does it Work?" This plan will work and is working.

CASE HISTORY.

The Jackson schools voluntarily began desegregation in 1961 (R. 11a), admittedly on a very limited basis, but a beginning was made. No suit had been filed directing this desegregation and in 1963, after filing of suit, the District Court for the Western District of Tennessee (Hon. Bailey Brown, District Judge), on Constitutional grounds only, granted summary judgment (R. 27a) requiring desegregation of the system under a plan to be submitted by the Board.

The School Board submitted a plan of desegregation to the District Court (R. 29a), including zones for elementary schools, which plan after modification as to time, was approved by the District Court (R. 33a). This decision was not appealed by Plaintiffs and was applied to the 1963-64 school year.

The Trial Court found no substantial difference between the quantity and quality of the buildings, equipment and curricula of the Jackson schools (R. 36a).

In September 1964 the Plaintiffs by *Motion for Further Relief* (R. 51a) attacked the elementary zones, already once approved by the District Court, as being gerrymandered racially and the Court allowed them a further hearing. A pre-trial hearing, amended motion, and examination of school records caused a delay of several months. This matter did not reach a hearing until spring of 1965 and in the meantime the School Board filed suggested Junior High School Zoning Maps. (R. 104a.) The Junior

High maps were likewise objected to (R. 106a) and the two propositions were consolidated for hearing.

On July 30, 1965 the District Court entered its Memorandum Decision (R. 365a) (Order dated August 11, 1965 (R. 390a)) which order (1) allowed certain changes to elementary zoning maps as suggested by the School Board (R. 375a), (2) made certain minor additional changes to elementary maps (R. 377a-378a), and (3) approved the Junior High School Zoning Maps (R. 378a-379a). (4) This order likewise found the School Board deficient in applying its transfer provisions under the plan (R. 372a), and ordered certain changes therein. In this same order the District Court (5) for the first time directed the School Board to end its policy of assigning only white teachers to predominantly white schools and of assigning only Negro teachers to predominantly Negro schools and provided certain conditions to be met (R. 380a-384a inc.). (6) The plan was likewise accelerated (R. 380a). All grades are now desegregated in the City of Jackson School System.

This is the order which was appealed to the United States Court of Appeals for the Sixth Circuit.

The Court of Appeals upheld the District Court in all respects except on the question of faculty and remanded the question to the District Court for further action in line with *Bradley vs. School Board*, 382 U. S. 103 (1965); *Rogers vs. Paul, et al.*, 382 U. S. 198 (1965) which decisions were published *after* the District Court delivered its opinion in this case (R. 397a et seq.).

While the District Court order of August 11, 1965 has been applied fully in the School years 1965-66, 1966-67 and 1967-68, there is nothing in this record to reflect the results of such application within the system. Significantly, no further attacks on the plan or its application

are now pending at the District Court or Appeals Court level.

In the District Court on the question of Junior High School Zoning, the Defendant offered its Superintendent of Schools C. J. Huckaba who introduced a zoning map creating three Junior High School Districts for the City of Jackson (Exhibit 10) (R. 141a-142a). Superintendent Huckaba testified that the Junior High School zones were prepared by him giving consideration to natural features, such as terrain, throughfares and railroads (R. 141a-135a), school load, teacher load, classroom load, proximity of school to other schools, location of the children to be served (R. 132a).

On a large map, Exhibit 11 (R. 141a-142a), the Junior High lines are indicated in red (R. 142a); the blue dots upon Exhibit 11 represent the residence of a white student and those dots in red indicate the residence of a Negro student as evidenced by a survey of school attendance, grades 1-12, and a preschool survey of ages 1-5 (R. 128a-129a-130a-131a); Mr. Huckaba testified as to capacity class load, teacher load in all schools (R. 133a-82a-89a); Mr. Huckaba denied racial considerations in preparation of zones (R. 206a).

The Plaintiffs offered witness Roger W. Bardwell who qualified himself as an educator (R. 207a) and stated that he is the school superintendent of School District 59, Elkgrove Township, Illinois, consisting of approximately 6200 students (R. 207a); that he in company with Mr. Merle Herman were employed by the N.A.A.C.P. (R. 224a) to make a study of the Jackson School Plan for desegregation (R. 209a); that they prepared maps for use which map shows the residence of only those students attending particular schools (R. 215a-216a), that such map did not show the residence of every student living within the respective

school districts (R. 227a); that he cannot distinguish on his maps between transfer students, students living in the area, or students allowed to remain in such school under the provision in the 1963 Court order allowing students attending a particular school to continue in such school until graduated regardless of residence (R. 228a-229a); that his exhibits 12-21 (R. 211a-_____) are not the same thing as is shown by Plaintiff's Exhibit No. 11 (R. 227a), that he could not have zoned the City Schools of Jackson in accordance with the desegregation plan and know with any degree of accuracy how many children would wind up in any school (R. 229a); that districting is a trial and error proposition (R. 229a); that in districting a school in an existing system it is necessary to take the schools where they are in creating districts (R. 231a); that he is not recommending circular districting of Jackson's schools as shown on his Exhibits 12-21 (R. 231a), that he was not asked to present a plan for the districting of Jackson's schools, that it would be presumptuous to do so, that he is not familiar with the situation, that he is not familiar enough to say the line should go down this street or that street (R. 233a); that he has examined school load, classroom load, capacity enrollment, etc. for city schools and that they are fairly balanced (R. 234a); that the school district of which he is superintendent has eleven elementary schools and two Junior High Schools sharing a high school; that his community has no Negro population at all; that he has had no experience in trying to integrate an all-white school district or in desegregating one that has been segregated (R. 235a); that all of his conclusions are drawn from the Exhibits 12-21 and not from his study of where children actually live over the entire community (R. 236a); that his conclusions were drawn not only on his educational experience but on what he understood the

law to be (R. 239a), that districting is for the local people (R. 240a).

The Plaintiffs offered Witness Merle G. Herman who qualified himself as an expert in education serving as Assistant Superintendent in the Villa Park School District, a district in Illinois of approximately 6200 students (R. 246a-247a). This witness testified that he favors what is known as a feeder system of zoning (R. 247a-248a-251a-254a), that zoning in the City of Jackson "did not facilitate integration" (R. 254a); that the school district of this witness is a part of greater Chicago as is Dr. Bardwell's district, that these districts receive State aid (R. 262a) and are a part of the overall system (R. 263a), that the districts transfer students between themselves (R. 263a), that in his district of Villa Park there are ten or twelve Negro students (R. 263a); when asked what steps he was taking in his district to correct the racial imbalance of ten Negroes out of 6800 students, his answer was that he plans to do something in the future (R. 265a); that as superintendent he has policy-making powers (R. 268a), that no objective move, actually concrete move, has been made to accomplish greater integration in his district (R. 269a); that he examined the Jackson school load, teacher load, classroom load and found them to be good (R. 276a); that districting is a matter of opinion (R. 276a), that his exhibits do not in any way set up a plan for the Jackson districts (R. 279a); that he considers integration necessary (R. 282a). This witness was asked to suggest a zoning plan for the Junior High Schools in the City of Jackson (R. 287a-288a) and he declined to do so (R. 288a-289a-290a-291a-292a-293a).

This case, therefore, is not a desegregation case at all within the plain meaning of the Brown decisions (*Brown vs. Board of Education*, 347 U. S. 483; (2) 349 U. S. 294).

This is now a case wherein these plaintiffs are seeking on Constitutional grounds (Fourteenth Amendment) an order compelling school boards to compulsorily mix its Negro children, because they are Negro, with its white children, because they are white and vice versa. Instead of eliminating compulsory state action based on race as sought in the District Court, it is now sought by this appeal to establish compulsory state action, solely based on race, as the law of the land, i.e. compulsory integration.

III.
SUMMARY OF ARGUMENT.
(40-2-(f)).

a. This appeal opens a new Constitutional question in that the relief sought is compulsory integration. The only basis asserted is that desegregation does not produce enough mixing of races independent of the question of discrimination. This will substitute for unconstitutional segregation based on race equally unconstitutional assignment based on no other factor except race. This is not within the scope of *Brown* which condemned only discrimination or otherwise required by the Constitution.

b. There is no Constitutional duty to mix races within schools and *Brown* did not so state. When discrimination is eliminated the Constitution is satisfied.

c. The decision of the Fifth Circuit in *U. S. v. Jefferson County*, 372 F. (2) 836, the only decision of note holding that compulsory integration is required is premised by its own terms on the legal basis that (1) the Constitution of the United States requires compliance with the provisions of the Guidelines of the Office of Education, Department of Health, Education and Welfare and (2) the Civil Rights Act of 1964 establishes a National Policy command-

ing integration. Defendants contend that both of these points are without legal foundation and that therefore *Jefferson County* by its own terms must fail. Further, that *Jefferson County* denies to Negro parents right-of-decision concerning their own children, rights guaranteed by the Ninth and Fourteenth Amendments to the Constitution. It is further contended that the Civil Rights Act of 1964 not only does not command integration, it contains prohibition against any such requirements. It is likewise contended that the *Guidelines* are not Constitutionally required and that same are violative of the Civil Rights Act of 1964.

d. The defendants position is that there is no legal, equitable or rational basis for trying to distinguish between "de jure" and "de facto" segregation. The only purpose for such effort is to limit the application of the alleged duty to compulsorily integrate to the South, in spite of the unquestionable fact all other areas abound in segregation by whatever name it may be identified. It is contended that such regional application of a constitutional duty is un-American, violates equal protection under the Constitution and the proscriptions of Art. I, Section 9, Clause 3 and Section 10, Clause 1 of the Constitution and is a question-begging distinction unworthy of the Federal Judiciary.

e. Respectable *educational* authority reflects clearly that compulsory integration damages both the individual, especially the underprivileged, and the school systems and does not produce real good for anyone. All quoted authorities support elimination of discrimination as in *Brown* but consider the schools should not be asked to do more in the struggle involving Civil Rights, poverty and moral and mental attitudes existing nationwide. These experts in education contend the job of the school to aid

in the fight against such national problems can best be performed by concentrated educational enrichment, especially in depressed areas. Compulsory integration will be a fleeting victory as experience across the country shows compulsory integration is followed by immediate residence relocation, therefore serving no purpose.

IV.

ARGUMENT.

a. RELIEF SOUGHT OPENS NEW CONSTITUTIONAL FIELD.

A proper argument of this matter requires, first of all, a true understanding of the thrust of the appeal. The vehicle in which this matter reaches this Court is a standard suit to require desegregation of a school system under the interpretation of the Fourteenth Amendment first expressed in the *Brown* cases (*Brown vs. Board of Education*, 347 U. S. 483; 349 U. S. 294). The basic relief sought in the original complaint in the District Court is as follows:

> "The Court enter a judgment or decree declaring that the custom, policy, practice or usage of defendants in maintaining and/or operating *compulsory* racially segregated public school system in and for the City of Jackson (and the County of Madison) State of Tennessee, and *in excluding plaintiff(s) and other persons similarly situated from the Jackson Senior High School and Alexander Elementary School, or any other public schools, institutions or facilities maintained and/or operated by defendant(s)*, City Board of Education (and County Board of Education) *solely because of race or color*, pursuant to the above quoted portions of Article II, Section 12 of the Constitution of Tennessee, Sections 49-3701, 49-3702 and 49-3703 of the Tennessee Code Annotated, 1955, and any other law, custom, policy, practice and usage,

violates the Fourteenth Amendment of the Constitution of the United States and is therefore unconstitutional and void." (Emphasis supplied.)

It was this relief which was summarily allowed by the District Court and this lawsuit proceeded under such banner until 1965 when the argument of "affirmative duty to disestablish segregation" appeared in the District Court. When this argument is so eloquently advanced, coupled with the proof offered of ways to obtain "greater integration" in the Junior High Schools, the lawsuit has changed banners and is no longer a "desegregation" proceeding. The appeal before the Sixth Circuit and now this Court is the culmination of nationwide efforts by the real plaintiff in all of these school proceedings to have the Federal Courts command "compulsory integration." The phrase "affirmative duty to disestablish segregation" has been especially coined for the hoped-for purpose of changing by semantics a *prohibition* into a *positive command.*

The Fourteenth Amendment prohibits, it does not command. Prohibiting state imposed segregation is one thing, commanding state imposed integration is an entirely different matter.

Federal Courts have traditionally distinguished between desegregation and integration.[6]

The Plaintiffs in this case are proceeding in the hope this Court will determine that the "end justifies the means," and the exercise in semantics set out above is an ingenious but transparent effort to provide this Court

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[6] *e.g., Bowman v. County School Bd. of Charles City Co.*, 382 F. 2d 326, 336 (4th Cir. 1967) (concurring opinion); *Stell v. Savannah-Chatham Co. Bd. of Ed.*, 333 F. 2d 55, 59 (n. 2) (5th Cir. 1964), cert. denied, 379 U. S. 933 (1964); contra, *United States vs. Jefferson Co. Bd. of Ed.*, 372 F. 2d 836 (5th Cir. 1966), aff'd en banc, 380 F. 2d 385, 389 (n. 2), cert. denied, 36 U. S. L. W. 3144 (U. S. 10-9-1967).

blinders with which to look the other way and declare *compulsory integration* a constitutional requirement.

The relief sought in the lower Court was an end to actions taken "solely because of race or color." The relief sought by this appeal is *compulsory assignment* of students based on *no other factor except race*. This presents a new Constitutional question.

This Defendant has been guided by principles laid down by this Court, as interpreted from time to time by the Circuit Courts of Appeals, and especially by the Sixth Circuit. The expressions by this Court are not many but are clear to this Defendant. The *Brown* cases clearly hold that *discrimination* is unconstitutional; that *State imposed* segregation based on race in schools is discriminatory and, therefore, is unconstitutional. That is what this Court set forth and that is all.

Mr. Chief Justice Warren clearly and succinctly states this in *Brown 2:*

> "The opinions of that date, declaring the fundamental principle that racial *discrimination* in public education is unconstitutional * * *." (p. 298.) (Italics supplied.)

and establishes beyond question that the prohibited act is *discrimination.*

Further, still quoting:

> "All provisions of federal, state or local law requiring or permitting such *discrimination* must yield to this principle." p. 298. (Italics supplied.)

This is not casual language as emphasized by Mr. Justice Frankfurter.

> "Mr. Justice Frankfurter: I am sure you will agree in this kind of litigation it is of the utmost importance to use language of fastidious accuracy?"

Mr. Marshall: Absolutely, we agree with you fully." (p. 126, Vol. 3, Oral Arguments, App, p. 187b).

This Court in *Brown* did not condemn *separation*. "Segregation with sanction of law" is condemned. (See discussion of Point 2 below (p. 18).)

The desegregation required by the *Brown* decisions is authorized only under the Fourteenth Amendment to the Constitution:

> "* * * nor shall any state deprive any person of life, liberty or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws * * *
>
> "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

The Plaintiffs in their petition for certiorari have limited this appeal by the statement contained on page 5 in said petition as follows:

> "Plaintiffs seek to have reviewed on certiorari the specific rule on gerrymandering of Junior High School zones in the Jackson City School System, which was based on the general legal premises of lack of an affirmative obligation to disestablish segregation of students."

The Plaintiffs rely primarily on the decision of the Fifth Circuit in *U. S. v. Jefferson County*, 372 F. (2) 836; 380 F. (2) 385, cert. den. O. T. 1967. Therefore, the actual position of the Plaintiffs in this appeal is that *compulsory integration* is constitutionally required, with three major points in support thereof:

1. That the Civil Rights Act of 1964 adopted by the Congress of the United States constitutes a National Policy demanding compulsory integration and therefore amounts

to "enforcement" of the Fourteenth Amendment under Section 5 thereof.

2. That the Constitution (Fourteenth Amendment) commands affirmative action by a school board to bring about the intermingling of races within public schools, i.e. compulsory integration.

3. That every plan for the administration of public schools, such as by geographic zoning, wherein compulsory segregation and discrimination is totally eliminated must be measured as to its constitutionality by the extent to which it results in actual integration or physical mixing of the races.

This defendant challenges the legal validity of all three propositions.

b. IS THERE A CONSTITUTIONAL DUTY TO MIX THE RACES IN PUBLIC SCHOOLS?

No decisions of this Court, or the circuit courts, other than perhaps the Fifth Circuit, impose any duty to bring about a mixing of the races in public schools by compulsory state action. With near unanimity the Circuits have consistently held that the only affirmative obligation is to "desegregate" the schools by eliminating compulsory assignments on the basis solely of race and that neither the Constitution nor *Brown* require integration; that they only prohibit state-enforced segregation.[7]

[7] *Springfield School Comm. v. Barksdale*, 348 F. 2d 261, 264 (1st Cir. 1965); *Bradley v. School Board of City of Richmond*, 345 F. 2d 210, 315-19 (4th Cir. 1965), *vacated and remanded on other grounds*, 382 U. S. 103 (1965); *Kelley v. Board of Education of Nashville*, 270 F. 2d 209, 226 (6th Cir.), *cert. den.* 361 U. S. 924 (1959); *Stell v. Savannah etc.*, 333 F (2) 59; *Bell v. School City of Gary*, 324 F. 2d 209, 213 (7th Cir. 1963), *cert. den.* 377 U. S. 924 (1964); *Downs v. Board of Education of Kansas City*, 336 F. 2d 988, 998 (10th Cir. 1964), *cert. den.* 380 U. S.

(Continued on following page)

For this reason, the same courts have consistently held that any plan which provides a "reasonable and conscious opportunity" to students to attend the school they want and eliminated bi-racial attendance zones complies, in itself, with the constitutional mandate without any further or different requirements in the nature of compelled assignments designed to promote or result in "integration." See *Lockett v. Board of Education*, 342 F. (2) 225, 228-29 (5th Cir. 1965).[8]

Decisions of two other circuits are also in accord although they do not contain express statements. In *Taylor v. Board of Education of New Rochelle*, 294 F. (2) 36 (2nd Cir. 1961), *cert. denied*, 368 U. S. 940 (1961), it was found that the school board "had *deliberately* created and maintained a racially segregated school" (294 F. (2) at 38), and it is significant, we think, that the relief decreed and approved was that children attending this school "shall be *permitted* to register and enroll in any other public elementary school in the New Rochelle Public School System" (294 F. (2) at 490). And in *Evans v. Ennis*, 281 F. (2) 385 (3rd Cir. 1960), although the court stated that the school system "must proceed to *integration* with all deliberate speed" (281 F. (2) at 394), it is evident from the opinion that the plan was based upon voluntary choice (the opinion stating elsewhere that in future years "more and more Negro children will *seek integration* into the

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914 (1965). (The holding in *Board of Ed. of Okla. City Schools v. Dowell*, 375 F. 2d 158 (10th Cir. 1967), *cert. den.*, 387 U. S. 931 (1967) was premised upon a finding of bad faith on the part of the school board in implementing its desegregation plan. See *Dowell v. School Bd. of Okla. City*, 244 F. Supp. 971, 981 (W. D. Okla. 1965).)

[8] Overruled in *United States v. Jefferson Co. Board of Ed.*, 380 F. (2) at 390. (This case will be treated specially hereafter. See page 25 this brief under heading "*Jefferson County.*")

public schools" (281 F. (2) at 391) and that the term "integration" was used as the term "desegregation" ordinarily is employed. The Eighth Circuit has not adopted the views of the Fifth Circuit.[9]

To be distinguished, of course, are decisions holding that a school board may voluntarily take steps to adjust racial imbalance.[10]

The decisions of this Court also make it plain that the condemned action is *discrimination* and that the only duty imposed by the Constitution is that of "desegregation," *i.e.*, the elimination of legally enforced segregation—and not "integration." This has consistently been the interpretation by the Fourth, Sixth and Eighth Circuits of the basic *Brown* decisions. And this, we submit, is the only conclusion which can be drawn from the language in *Brown*. In *Brown I*, this Court decided only that "segregation of children in public schools *solely* on the basis of race" was unconstitutional (347 U. S. at 493, 494).[11]

It was "(s)egregation *with the sanction of law*" that was found to have a tendency to retard the educational development of children (347 U. S. at 494).

In *Brown* 2, this Court significantly spoke in terms of the "*admission*"—not assignment—of students "to public schools as soon as practicable on a non-discrimina-

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[9] *Yarbrough v. Hulbert-West Memphis School Dist.*, 380 F. (2) 962 (8th Cir. 1967); *Clark v. Board of Education of Little Rock*, 374 F. (2) 569 (8th Cir. 1966). *Cf. Raney v. Board of Education of Gould School Dist.*, 381 F. (2) 252 (8th Cir. 1967), also before this Court.

[10] See, e.g., *Wanner v. County School Bd. of Arlington County*, 357 F. (2) 452 (4th Cir. 1966).

[11] Mr. Thurgood Marshall: "The real question involved is as to whether or not the states involved as of now, today, do or do not have power to use race and race alone for the basis of segregation * * *." (p. 33, Vol. 2, Cases 1-5 U. S. Supreme Court, Oct. Term 1954 (12-(7-9)-53). *Gebhart v. Belton.*)

tory basis." 349 U. S. at 300. Indeed, the opinion indicates even that this Court considered the proper remedy to be freedom of choice. The questions propounded and considered by the Court respecting the proper method of achieving desegregation in accordance with its earlier decision in *Brown I* were (349 U. S. at 298, n. 2):

> 4. Assuming it is decided that segregating in public schools violated the Fourteenth Amendment (a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should *forthwith* be *admitted to schools of their choice*, or (b) may this Court in the exercise of its *equity* powers permit an effective *gradual adjustment* to be brought about from existing segregated systems to a system not based on color distinctions? (Emphasis added.)

Cooper v. Aaron, 358 U. S. 1 (1958), similarly spoke in terms of "the duty of desegregation" as requiring the "admission"—not the compulsory assignment—of "qualified Negro children." 358 U. S. at 7. The nature of the affirmative duty thus imposed upon schools was made crystal clear:

> "State authorities were thus duty bound to devote every effort toward *initiating desegregation* and bringing about the *elimination of racial discrimination* in the public school system."

It was not a duty to take affirmative steps to see that any particular number of Negro students actually *integrated*—or that all-Negro schools were eliminated as is argued here by Plaintiffs. Except for cases dealing with speed of desegregation and one case, *Goss v. Board of Education of Knoxville*, 373 U. S. 683 involving a provision permitting *white* students to transfer on the basis of race so as to nullify integration, this Court has taken no opportunity since *Cooper v. Aaron* to state positively the nature of

plan provisions which would be deemed to be adequate compliance within *Brown 2*. This Court also has had numerous opportunities to review decisions of the lower courts holding that the Fourteenth Amendment only prohibits state-enforced segregation but does not require affirmative "integration," but has declined.[12] Indeed, on two occasions—in *Goss* and by implication in *Calhoun v. Latimer*—the Court has approved freedom of choice plans.

The Plaintiff's argument in the present proceeding contemplates a requirement of compulsory assignments to achieve racial mixing or balance, if necessary. This represents a radical departure from constitutional principles established by prior decisions of this Court and other Federal Courts. The Plaintiff is seeking a *replacement* of freedom of choice or transfer with a system of compelled assignments—a replacement which the Plaintiff contends is *constitutionally required*.

The Plaintiff's position is sustainable only if the Fourteenth Amendment *requires* Negro children to attend schools with whites and *requires* that they may be made to do so by compulsory racial assignments. This Court and every other Federal appellate court case, except one, have held that this is *not* required by the Fourteenth Amendment. In view of the Plaintiff's basic premise that the existence of schools which are all-Negro compels the conclusion that Jackson's Plan is constitutionally inadequate, it is appropriate to reiterate that the basic rationale in the decisions of the courts for the acceptance of such

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[12] Among them are *Calhoun v. Latimer*, 377 U. S. 263, 264 (1964); *Bradley v. School Bd. of City of Richmond*, 382 U. S. 103, 105 (1965); *Downs v. Board of Education of Kansas City*, 380 U. S. 914 (1965); *Bell v. School City of Gary*, 377 U. S. 924 (1964); *Kelley v. Board of Education of Nashville*, 361 U. S. 924 (1959); *Deal v. Cincinnati Board of Education*, 389 U. S. 847 (1967).

plan has been as stated in *Goss v. Board of Education*, 373 U. S. 683.[13]

The same contention the Plaintiffs make here, *i.e.*, racial mixing is required—was made and rejected in *Bradley v. School Board of City of Richmond*, 345 F. (2) 310 (4th Cir. 1965), *vacated and remanded on other grounds*, 382 U. S. 103 (1965).

A zone system such as Jackson has is educationally sound. It is easy to administer. It is clearly within the discretion of the School Board to establish such a plan; it is not Constitutionally within the province of the Federal Government to determine the best and most efficient means of administering schools and educating children.[14]

This Defendant concludes from the above decisions that there is no Constitutional duty to mix the races in public schools and that this Court in the *Brown* decisions did not so intend. Reference is made to the portion of the Appendix to this brief in which are copied extracts from the discussions between counsel and members of the Court during the argument in the original *Brown* cases (Appen-

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[13] See also *Kier v. County School Board of Augusta County*, 249 F. Supp. 239, 242 (W. D. Va. 1966), which says that they are "but a corollary of the principle that the Fourteenth Amendment does not prohibit voluntary separation of the races, but only discrimination which forces separation."

[14] *Kelley v. Altheimer Ark. Public School District*, 378 F. (2) 483, 497 (8th Cir. 1967) (discussing costly and inefficient bus system).

As stated in oral argument of *Brown* cases on behalf of United States:

"Mr. Rankin: No. (Laughter) Secondly, I think that this Court does not have the duty or the function to try to determine what is a wise educational policy for each one of the various school districts in the country.

"Justice Jackson: I am with you there."

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dix, p. 170b). Justice Reed (pp. 24, 35, 59, 65, 66, 67, 80), Justice Harlan (pp. 31, 32), Justice Clark (pp. 32, 33), Justice Minton (p. 62), Justice Black (pp. 62, 63, 64, 65) and Justice Frankfurter (p. 69) clearly indicate that they are concerned only with the elimination of discrimination and that free choice and lack of compulsion may result in all Negro or all white schools without condemnation.[15]

The fact that separation of races could constitutionally exist even after segregation based on law is removed was clearly recognized by the parties involved in the original *Brown* cases.[16]

The Plaintiffs in their Brief (pp. 25, 26, 27) place considerable emphasis upon the Tenth Circuit decision in *Board of Education of Oklahoma City v. Dowell*, 375 F. (2) 158, 1967. That case is premised altogether upon a finding by the trial court of bad faith on the part of Board of Education. The Court made it plain that it was not undertaking to upset its decision in *Downs v. Board of Education of Kansas City*, 336 F. (2) 988, *cert. den.* 380 U. S. 914 which upheld the neighborhood plan and stated that the Constitution does not require compulsory integration.

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[15] References to pages are to the original page numbers in the transcribed argument (App. p. 178b et seq.).

[16] Brief of American Veterans Committee in *Brown 2*, pp. 5 and 6 (Appendix 169b).

Brief for the Congress of Industrial Organization (Hon. Arthur Goldberg) pp. 7 and 8 (Appendix 167b).

Brief of the United States in *Brown 2*, pages 12 and 26 (Appendix 166b).

c. JEFFERSON COUNTY.

The only significant authority to be found anywhere which appears to hold that the Fourteenth Amendment requires compulsory integration is the case of *United States v. Jefferson County,* 372 F. (2) 836 (1966) (5th) (*cert den.* 1967 O. T.).

The disarray caused by this decision is reflected at once in the dissents thereto filed by Judges Gewin, Bell, Coleman and Godbold. The opinion has encountered the extraordinary treatment of outright rejection by the Eighth Circuit, *Clark v. Board of Education,* 369 F. (2) 661 (8th Cir. 1966); *rehearing denied* 374 F. (2) 569 (1967); *Jackson v. Marvell School District*—not yet reported—is the latest decision of the Eighth Circuit; and by the Sixth Circuit in this case, the only circuits to date which have considered the *Jefferson County* case.

Approximately fifty prior decisions of the Fifth Circuit were plainly overruled by *Jefferson County.*[17]

The Constitution has not changed. This Court has issued no new decrees on the subject. It can only be considered that the original decisions of the Fifth Circuit were works of deliberation and careful attention. Why, then, *Jefferson County*?[18]

The language of the decision establishes the answer (p. 845):

> "Once again the Court is called upon to review school desegregation plans to determine whether the

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[17] See for example: (*Avery v. Wichita Falls Ind. School Dist.,* 241 F. (2) 230; *Borders v. Rippy,* 247 F. (2) 268; *Cohen v. Public Housing Adm.,* 257 F. (2) 73; *Boson v. Rippy,* 285 F. (2) 43; *Evers v. Jackson Municipal Separate School Dist.,* 328 F. (2) 408; *Stell v. Savannah-Chatham County Board of Education,* 333 F. (2) 55).

[18] In *Jefferson County* the Court was dealing only with "freedom of choice" plans, and did not consider a desegregation plan based on non-racial geographic zone lines. Page 879.

> plans meet constitutional standards. The distinctive feature of these cases * * * is that they require us to *re-examine school desegregation standards in the light of the Civil Rights Act of 1964 and the Guidelines of the United States Office of Education, Department of Health, Education and Welfare (HEW).*" (Italics supplied.)

It is abundantly plain therefore that prior to *Jefferson County* the Fifth Circuit had been governed by Constitutional requirements alone and the interpretation thereof by this Court.

The only difference, then, using the Court's own words, was that in *Jefferson County* they were called on to *reexamine school desegregation plans (Constitutional questions) in the light of new legislative acts and current executive department directives,* apparently having in mind Section 5 of the Fourteenth Amendment.

The opinion of the Fifth Circuit in *Jefferson County* sets forth one clear indication of the thinking of the Court which caused the Court to reject its own mass of precedent:

> "The United States Constitution, as construed in Brown, *requires* public school systems to integrate students, faculties, facilities and activities." p. 846. (Italics supplied.)

This Defendant is unable to find anything in the Constitution, or the *Brown* decisions, requiring a State to *integrate* its public schools in any manner. The Fifth Circuit is trying to convert into Constitutional language the Plaintiff's phrase of "affirmative duty to disestablish segregation." The Constitution simply does not so state. The English language cannot be sufficiently tortured to transpose a prohibition against denial of equal protection into a positive command to a state to take affirmative action to establish racial balance or mixing in schools.

The Tenth Amendment to the Constitution of the United States stands squarely between the Fifth Circuit and its stated objective of compulsory integration. Education or schools are not mentioned in the Constitution of the United States and therefore, beyond question, are subject matters reserved to the respective States, and expressly denied the Federal Government, by the Tenth Amendment. The Constitution properly inhibits denial of equal protection of the laws. When such denial is removed the Constitution is satisfied. Nowhere does it grant any person or group a right of compulsory association, nor *require* anything in the way of education, nor give to the Federal Government the operation or control of Public Schools. In the absence of such a grant *Jefferson County* must fail.

For the Court in *Jefferson County* to find any help in the Civil Rights Act of 1964 or the 1966 Guidelines of HEW, in considering the Constitutional provisions of the Fourteenth Amendment, it had to be under the provisions of Section 5 of such amendment.[19] It is important to note that the power to "enforce" does not include the power to extend the prohibitions of the Fourteenth Amendment so as to change the meaning of such amendment.

> "This the amendment guarantees but no more. The power of the National Government is limited to the enforcement of this guaranty." *U. S. v. Cruikshank*, 92 U. S. 555, 23 L. Ed. 588.

The prohibitions of the Fourteenth Amendment are directed to State action and not to actions of individuals.

> "It is the restrictions on State Power which Congress is empowered to enforce * * *." *Ex parte Virginia*, 100 U. S. 46, 25 L. Ed. 676; *U. S. v. Patrick*, 54 F. 338.

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[19] "The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article."

It is plain that the Plaintiffs in *Jefferson County*, as in this case, were complaining not about State action, they were complaining about the action of the individual members of the class which they claimed to represent. These Plaintiffs are complaining because individual Negro families are not electing to do with their own children those things which are freely available to them. This is not a Constitutional violation, it is the exercise by a free American of a free choice in a matter concerning his own children. A choice or right guaranteed by the Ninth and Fourteenth Amendments to the Constitution of the United States.[20]

The paternalistic attitude of the Plaintiffs in this case, as evidenced by this appeal, is that they know what is best for every single Negro family in these United States and that these families should not have the legal right to make their own determination.

Inasamuch as *Jefferson County* by its own terms is founded on the Civil Rights Act of 1964 and the *Guidelines* (App. p. 188b) of HEW, this Defendant considers itself compelled to treat with both points in this brief, *post*.

Does the Civil Rights Act of 1964 Establish Compulsory Integration as a National Policy?

The fallacy in *Jefferson County* relating to the Court's conclusion therein that the above question should be answered in the affirmative is apparent even to a casual reading of the Act. Not only does the Act not establish a requirement of compulsory integration, the Act contains many clear prohibitions against requiring compulsory

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[20] AMENDMENT 9.

Rights retained by people.—The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

integration or racial balance. The caption of the Act on this subject is "* * * to prevent *discrimination* in federally assisted programs * * *."

Title II is entitled "Injunctive Relief Against *Discrimination etc.* * * *"

Title III is entitled "*Desegregation* of Public Facilities."

Title IV is entitled "*Desegregation* of Public Education."

In Title IV, Section 401(b) provides as follows:

> " 'Desegregation' means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but 'desegregation' shall not mean the assignment of students to public school in order to overcome racial imbalance."

Section 407(a)(1) of this title authorizes suit by the Attorney General for denial of "equal protection of the laws * * *."

(2) authorizes suit if "*denied admission* to or not permitted to continue * * * by reason of race etc."

Section 410 of this section makes very plain that elimination of discrimination is the purpose of the Act and that "denial of admission"—not assignment—because of race is the *discrimination* in point.

> "Nothing in this title shall prohibit classification and *assignment* for reasons other than race, color, religion or national origin."

Under Title VI under the heading "Non-discrimination in Federally Assisted Programs," Section 601 provides:

> "No person in the United States shall, on the ground of face, color or national origin, be excluded

from participation in, be denied the benefits of, or be subjected to *discrimination* under any program or activity receiving Federal financial assistance." (Italics supplied.)

The above quoted and referred to sections are all prohibiting sections, they do not command anything.

The legislative history of this Act makes it abundantly plain that the Civil Rights Act of 1964 was providing a national policy against *discrimination* and nothing more.

The case of *Bell v. School City of Gary, Indiana*, 213 F. Supp. 819 (N. D. Ind.), aff'd, 324 F. 2d 209 (7th Cir., 1963), *cert. den.* 377 U. S. 924 (1964), is of vital importance in construing the Civil Rights Act of 1964. The legislative history makes it clear that Congress was adopting the opinions in this case as a whole, and not just the narrow holding respecting racial imbalance or de facto segregation.[21]

The Civil Rights Act of 1964 was enacted on July 2, 1964. Title IV and Title VI affected the questions determined by the Fifth Circuit in *Jefferson County*. Senator Humphrey of Minnesota (now Vice President of the United States) was the floor manager of the bill in the Senate, assisted by Senator Cooper of Kentucky and Senator Javitts of New York.[22]

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[21] Senator Humphrey observed (110 Cong. Rec. 12715):

Judge Beamer's opinion in the *Gary* case is significant in this connection. In discussing this case, as we did many times, it was decided to write the thrust of the court's opinion into the proposed substitute.

[22] The following, appearing on page 12715, et seq., of the Congressional Record for June 4, 1964, is significant:

Mr. Humphrey. But I am manager of the Bill and, as a part of the legislative history, that would have some importance. It would not be important because those words came from Senator Humphrey, but it would be important because the Senator from Minnesota is the manager of the bill.

Senator Humphrey clearly spelled out the intent of Congress that actions under Title VI affecting schools are limited by the provisions of the Act affecting schools as follows:

> "Mr. Byrd of West Virginia: Can the Senator from Minnesota assure the Senator from West Virginia that under Title VI School children may not be bused from one end of the community to another end of the community at the taxpayers' expense to relieve so-called racial imbalance in the schools?
>
> Mr. Humphrey: I do.
>
> Mr. Byrd of West Virginia: Will the Senator from Minnesota cite the language in Title VI which would give the Senator from West Virginia such assurance?
>
> Mr. Humphrey: That language is to be found in another title of the bill, in addition to the assurances to be gained from a careful reading of Title VI itself.
>
> Mr. Byrd of West Virginia: In Title IV?
>
> Mr. Humphrey: In *Title IV* of the bill * * *
>
> Mr. Humphrey: Yes. I do not believe in duplicity. *I believe that if we include the language in Title IV, it must apply throughout the act.*"

The words of the Civil Rights Act of 1964 are so clear that it should not be necessary to review the legislative history to determine that Congress did not intend to grant authority to compel integration. However, any misunderstanding is removed by the following legislative history made by Senator Humphrey as the floor manager of the bill in the Senate:

> "Mr. Byrd of West Virginia: Will the Senator from Minnesota read that language in Title IV?
>
> Mr. Humphrey: Yes; I would be more than happy to do so.
>
> The provision merely quotes the substance of a recent court decision, which I have with me, and which I desire to include in the Record today, *the so-*

called Gary case. The language appears on page 21 of the substitute bill beginning on line 18. It refers back to matters of desegregation. The language is as follows:

> Provided, That nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or *otherwise enlarge the existing power of the court to insure compliance with constitutional standards.*

Mr. Byrd of West Virginia: What does the word 'herein' mean?

Mr. Humphrey: It means within the act.

Mr. Byrd of West Virginia: Does it mean the act or the title?

Mr. Humphrey: It means the act.

Mr. Byrd of West Virginia: * * * Cannot the office of Education, pursuant to carrying out this regulation, deny assistance to school districts wherein racial imbalance exists?

Mr. Humphrey: Let me read from the substitute:

> *Provided, That nothing herein shall empower any official or court of the United States to issue any order.*

Mr. Byrd of West Virginia: 'To issue any order,' but does it provide that the Office of Education shall not cut off federal assistance?

Mr. Humphrey: But in order to cut off federal assistance, the President would have to issue the order, if the Senator will read Section 602.

Mr. Byrd of West Virginia: The words are:

> *No such rule, regulation or order shall become effective unless and until approved by the President.*

Mr. Humphrey: That is correct.

Mr. Byrd of West Virginia: What assurance does the Senator give me that the President will not approve such a requirement?

Mr. Humphrey: Because I do not believe the President will violate the law.

* * *

Mr. Byrd of West Virginia: The President would not be violating the law if such a requirement were established with his approval.

Mr. Humphrey: It is already provided in the proposed substitute that—

> Nothing herein shall empower any official or court of the United States to issue any order.

Mr. Byrd of West Virginia: That is correct, but that is in Title IV.

Mr. Humphrey: But it applies to the act.

Mr. Humphrey: * * * Under Title IV and under Title VII (VI) have already indicated to the Senator that the word 'herein' applies to the act—

Mr. Byrd of West Virginia: The Senator from Minnesota has said that:

Mr. Humphrey: But I am manager of the bill, and as a part of the legislative history, that would have some importance * * *."

This legislative history indicates clearly the intent of the proviso to Sec. 407(a) that schools shall not be deemed to have an affirmative duty to effect actual "integration."

Section 602 [23] of Title VI carries a grant of authority

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[23] This section in full is as follows:

Section 602. "Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provision of Section 601 with respect to such program or activity by issuing rules, regulations or orders of general applicability *which shall be con-*

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and a mandatory direction for the agency involved to carry out the provisions thereof so as to be consistent with the *achievement of the objectives of the statute authorizing the financial assistance* in connection with which the action is taken.

The statute dealing with public schools and which "authorizes" the "financial assistance" for such school program is the Elementary and Secondary Education Act of 1965. This is the statute referred to in Section 602.

What, then, are the stated objectives of the Elementary and Secondary Education Act of 1965?

One good indication is to be found in the title: "An Act to Strengthen and Improve Educational Quality and Educational Opportunities in the Nation's Elementary and Secondary Schools."

Section 201 of this act contains an express declaration of policy which is as follows:

> "Sec. 201. In recognition of the special educational needs of children of low-income families and the impact that concentrations of low-income families have on the ability of local educational agencies to support adequate educational programs, the Congress hereby declares it to be the *policy of the United States to provide financial assistance (as set forth in this title) to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means (including preschool programs) which contribute particularly to meeting the special educational needs of educationally deprived children.*" (Italics supplied.)

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sistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation or order shall become effective unless and until approved by the President." (Italics supplied.)

The above provisions therefore indicate that the Civil Rights Act of 1964 is not a declaration of national policy of *integration*.

In addition thereto a declaration of national policy by the reference contained in Section 602 of the Civil Rights Act of 1964 is that declaration expressly set forth in Section 201 of the Elementary and Secondary Education Act of 1965 i.e. the improvement of the educational programs mentioned in such section.

This defendant submits therefore that there is no national policy commanding integration, that to the contrary there are express prohibitions against any requirement of racial balancing. We also submit that the only national policy applicable to the public schools of the United States is that of improving and enriching educational programs for the Nation's children, especially the underprivileged. Any national policy undertaking to do otherwise with the public schools of this nation would be folly.

The Fifth Circuit simply misconstrued this Act in *Jefferson County*.

The "1966 Guidelines" (App. p. 188b) Violate the Civil Rights Act of 1964 and Are Not Required by the Constitution.

The Guidelines were adopted as the plan of the Court in *Jefferson County*. The Court also stated the Guidelines were one of the basic reasons for its reversal of its former precedents.

The effect of the Fifth Circuit action in adopting the Guidelines as the plan of the Court is to serve as enforcement of the Guidelines (compulsory integration) as a constitutional duty without touching the question of whether or not the Guidelines are legal under the Civil Rights

Act of 1964. We have already treated in this brief the fact that the Constitution does not require compulsory integration.

The Court skirted the issue of legality of the Guidelines by holding that "They are required by the Constitution and, as we construe them, are within the scope of the Civil Rights Act of 1964" (p. 848). Is this Court prepared to say the Constitution requires the provisions of the Guidelines of HEW?

Without considering the legality of the Guidelines, the Court gave sufficient weight thereto to totally reverse itself on a basic constitutional question. This "enforcement" of the Fourteenth Amendment changes the entire meaning of the Amendment. This defendant considers itself compelled to challenge the legality of such Guidelines. It should be remembered that under Section 5 of the Fourteenth Amendment only Congress is granted the right to enforce by legislation the Fourteenth Amendment, not the Commissioner of Education. Thus an administrative regulation of the Commissioner must be legally founded upon an Act of Congress.

What is the *Guidelines* issued by HEW? There are those, including the *Fifth Circuit*, who say the *Guidelines* are simply "statement of policy." *Jefferson County*, p. 857.

If that position be correct, then the *Guidelines* are entitled to no weight at all in a Court in a consideration of a Constitutional question. It is not an order, an executive decree or regulation. It is comparable to a form letter distributed generally for aid in making application for participation in a program.

The HEW Guidelines would fall within the classification of rulings and directives by the Treasury Department and other administrative agencies. Various departments prepare similar directives variously referred to as Solici-

tor's Memoranda, Department Committee Regulations, Advisory Board Memoranda, etc. One of the most recent announcements by this Court of the attitude of the courts toward such rules, directives, or memoranda was made in the case of *U. S. v. Mississippi Chemical Corp.*, 326 F. 2d 569 (5th Cir. 1964) where the Court said:

> "As it is stated in *Helvering v. Edison Brothers Stores*, 133 F. 2d 575: *'The Treasury Department cannot by interpretative regulations, make income of that which is not income within the meaning of the Revenue Acts of Congress.'* Compare the statement of the Supreme Court in *Blatt Co. v. United States*, 305 U. S. 267: *'Treasury regulations can add nothing to income as defined by Congress.'* Treasury Regulations and Treasury Decisions, however, are not involved in the issue for decision here. The taxpayer's position is that the Commissioner cannot, *by solicitor's memoranda, departmental committee recommendations, or rulings, or by his own private rulings in this case,* make taxable income to the cooperative of that which is taxable income to the patron. * * * As a matter of fact and law, administrative practice has no effect upon the determination of what constitutes gross income, except insofar as the *practice is in accord with the rules of law governing that determination.*" [24] (Emphasis added.)

On the other hand, if the *Guidelines* constitute a flat ultimatum to be met under penalty of losing federal funds under Section 601 of the Civil Rights Act of 1964, then the *Guidelines* is a regulation. If it is a regulation it is void as the President of the United States has not approved same as required by Section 602 of the Act. It is likewise void as being contradictory to the language and intent of the Civil Rights Act of 1964.

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[24] See *United States v. Bennett*, 186 F. (2) 407.

As required by Section 602 of the Civil Rights Act of 1964 HEW prepared what was termed its Regulations and submitted same for the signature of the President.[25] This bland document contained no regulations at all within the meaning of Section 602 but was signed December 3, 1964. Thereafter, under Section 80.4(c) of such approved document the *real* regulations (Guidelines) were issued without the approval of the President of the United States. This is nothing more than a sidestep of a direct Congressional edict. This defendant cannot imagine any other set of circumstances under which such a patent evasion of a Congressional Act would be tolerated by a Federal Court. A "regulation" is that which regulates. The Guidelines clearly do *nothing* but regulate, a district must comply or lose Federal funds. It is clear that the Guidelines is the type regulation which Congress intended to be subject to Presidential approval—by whatever name it may be identified.[26]

In 2 AM. JUR. 2d 168, Sec. 354—*Compliance with statutes*—the following general rule is stated:

> *"The general principles that all powers of an admistrative agency must be exercised in accordance with*

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[25] 45 CFR, Part 80, 64 FR 12593.

[26] Sec. 602, Title VI—Nondiscrimination in Federally Assisted Programs, Civil Rights Act of 1964, contains the following requirements:

> "Sec. 602. Each Federal Department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of Section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. *No such rule, regulation, or order shall become effective unless and until approved by the President.*"

the statute or other law conferring such power, and that an agency's jurisdiction or authority to act depends upon compliance *with the statute vesting power in the agency,* apply in relation to procedural provisions laid down in the statutes governing the agency, at least such as are deemed mandatory and involve matters of substance and not mere technicalities. *An attempt to exercise a power without compliance with the provisions as to the manner and circumstances of its exercise is a nullity.* All persons are charged with knowledge of the provisions of statutes and must take note of the procedure adopted by them; when that procedure is not unreasonable or arbitrary, there are no constitutional limitations relieving them from conforming to it."

In *Mahler v. Eby,* 264 U. S. 32, 68 L. ed. 549, 44 S. Ct. 283 (1924), Mr. Chief Justice Taft rendered the opinion of the Court which requires an executive agency to substantially comply with the statutory procedure, saying:

"* * * The defect is jurisdictional. There is no authority given to the Secretary to deport except upon his finding, after a hearing, that the petitioners were undesirable residents. There is no evidence that he made such a finding except what is found in the warrant of deportation. * * *

The finding is made a condition precedent to deportation by the statute. *It is essential that where an executive is exercising delegated legislative power he should substantially comply with all the statutory requirements in its exercise,* and that, if his making a finding is a condition precedent to this act, the fulfilment of that condition should appear in the record of the act. * * *" [27]

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[27] See *Civil Aeronautics Board v. Delta Airlines, Inc.,* 367 U. S. 316, 6 L. ed. 2d 869, 81 S. Ct. 1611; *Wichita R. & Light Co. v. Public Utilities Commission,* 260 U. S. 48, 67 L. Ed. 124, 43 S. Ct. 51 (1922); *National Labor Relations Board v. Prettyman,* 117 F. (2) 786 (CA 6th 1941).

The Guidelines themselves are nothing more or less than a set of regulations affecting the operation of every phase of school activity and commanding compulsory integration therein. It therefore violates the prohibitions contained in the Civil Rights Act of 1964. Some of the prohibitions violated in the Civil Rights Act of 1964 are Sections 401(b), 604; 701(b); 407(a); 410; 601; 602; 702; 703(j). Some of the sections of the Guidelines which violate the Act are 181.11; 181.14; 181.54; 181.43; 181.45; 181.49; 181.51.

It is not contended that the Fifth Circuit in *Jefferson County* could not adopt any plan it chose *consistent with the Constitution,* the same as other Courts do in these school cases. The point is that in *Jefferson County* the Court *started* with the Guidelines as the very basis for overruling its prior decisions, finding the Guidelines to be *constitutionally* required and *commanded* by the Civil Rights Act of 1964 as a part of a national policy of integration. The entire basis for *Jefferson County* falls if such Guidelines are not constitutionally required and the Civil Rights Act of 1964 is not a declaration of national policy of integration as outlined above.

This defendant submits that if the Court reaches this question in its determination of this case the Guidelines should be declared invalid.

It is apparent that the Fifth Circuit in *Jefferson County* has been misled in the application of the provisions of the Civil Rights Act of 1964 and the Guidelines of HEW.

d. IS THE CONSTITUTION SUBJECT TO REGIONAL APPLICATION?

The Plaintiffs have conceived the rationale that the alleged Constitutional command of *integration* applies *only* to States which had a current segregation statute prior to *Brown* (de jure segregation)—the South—and does not apply to those States which did not have a current segregation statute at the time of *Brown* (de facto segregation). The Fifth Circuit seemingly agreed to this double standard of law in *Jefferson County*.

How do Plaintiffs draw the line on States having segregation statutes on the books at the exact time of *Brown*? This Court could not say in *Brown* at exactly what point in time segregation became unconstitutional, apparently the development of the art of psychology was related in some way to such point in time. All States had segregation statutes to some extent at one time or another. Kansas had a segregation statute under which Topeka was operating in the original *Brown* case and the Court made no distinction there. Until 1949 Indiana had such a statute. See *Bell v. Gary*, 213 F. Supp. 822. In *Tina Deal v. Cincinnati* (6th Circuit) 369 F. (2) 55 *Cert. den.* OT 1967 where racial *separation* is admitted but justified on the premise that neighborhood school zoning simply includes only Negro children because of racial housing patterns (de facto segregation) the State of Ohio had a segregation statute until just prior to *Plessy v. Ferguson*, 163 U. S. 537. Who is to say that such statute did not lay the ground work for present day de facto segregation?

Finally, the *Jefferson County* decision avoids the question of de facto segregation by saying:

> "The neighborhood school system is rooted deeply in American culture. Whether its continued use is

> constitutional when it leads to grossly imbalanced schools is a question some day to be answered by the Supreme Court, but that question is not present in any of the cases before this Court." [28] (p. 879.)

Is this Country ready for a federal system of regional law? Is one State to be judicially declared a "good" state and the other a "bad" state? Are States which today are lawfully carrying on their affairs to be punished tomorrow if this Court declares a new concept of Constitutional law thereby invalidating such State action? We think Mr. Justice Thurgood Marshall expressed the proposition about as well as it can be expressed in argument to this Court while serving as counsel for the plaintiffs in the original *Brown* case wherein he stated:

> "The next point I want to make on the general side is what I made before, and that is the need for uniform application of our Constitution and all of its provisions throughout the Country so that freedom of the press won't mean one thing in one State and another thing in another state, so that all of these rights in the Constitution—It has never been said on any other right that I know of that special exceptions should be made as to one state or the other." [29]

We concur with Mr. Justice Marshall on that point.

The theory that the "South" must pay its price for having, pursuant to what was then recognized without question as the law of the land, segregated the races in its

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[28] See *Henry v. Clarksdale Mun. Sep. Sch. Dist.* (No. 23,255) in Fifth Circuit, Argued May 24, 1966, Not decided. Reported only in Race Relations Law Reporter, Vol. II, No. 2, Summer 1966, p. 719.

[29] P. 124, Vol. III, Oral Arguments, Cases No. 1-5 before the Supreme Court of the United States, October term 1954, April 11-14, 1955.

schools has been expressly rejected by the Sixth Circuit in this case.[30]

Dr. James Bryant Conant in *Slums and Suburbs* has a more fair-minded approach to the question when he says:

> "As I read the history of the United States, this Republic was born with a congenital defect—Negro slavery." (App. p. 112b.)

According to Dr. Conant this defect was allowed, as a National Policy, to continue after the Civil War.

> *"The present situation is a consequence of a National Policy, or rather the lack of a National Education Policy, which has persisted for generations."* (App. p. 115b.)

This lack of a National Education Policy has now been cured by the adoption of the Elementary and Secondary Education Act of 1965.

Dr. Conant's evaluation of the current problem is far more reasonable than that presented by the finger-pointing approach. The distinction between "de jure" segregation and "de facto" segregation begs the question. It is unworthy of the federal judiciary.

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[30] The Court said in its opinion:

"*However ugly and evil the biracial school systems appear in contemporary thinking, they were, as Jefferson, supra, concedes, de jure and were once found lawful in Plessy v. Ferguson*, 163 U. S. 537 (1896), *and such was the law for 58 years thereafter. To apply a disparate rule because these early systems are now forbidden by Brown would be in the nature of imposing a judicial Bill of Attainder. Such proscriptions are forbidden to the legislatures of the states and the nation*—U. S. Const. Art. I, Section 9, Clause 3 and Section 10, Clause 1. *Neither, in our view, would such decrees comport with our current views of equal treatment before the law.*" (p. 958.)

e. COMPULSORY INTEGRATION IS EDUCATIONALLY DAMAGING TO UNDERPRIVILEGED GROUPS AND TO SCHOOL SYSTEMS GENERALLY.

Foreword.

A professional biography of the author of each work cited hereafter appears before such work in the Appendix to this brief.

The 1954 decisions of this Court in the *Brown* cases centered the efforts of many groups on public schools, seeking to use schools as a pry-pole for all kinds of community social changes.

There are those in this country who believe the Federal courts should issue a sweeping all-inclusive order requiring racial balance in the schools of this country. Racial balance is what the Plaintiffs want here, however they shy away from seeking such an order applying anywhere except in the South. In this brief this defendant has already stated the belief that such an order is not legally justifiable.

But what is the actual effect of such an order on our schools—whether nationwide or in the South?

This Defendant believes the only reason for the existence of the public schools in our country is to educate *all* of our children to the greatest extent possible. Our schools are not cure-alls for social problems. That is not to say that cures for such problems ought not be sought, it is a simple proposition that such is not the problem of the schools. There is highly competent authority to back up this position. The official position of the National Education Association on this question is as follows:

> "*Educational considerations should be primary in the schools.* The questions which arise from efforts to eliminate de facto segregation deeply involve public

> passions pro and con, thereby complicating the search for solutions that the public will tolerate. This search must be illuminated by the understanding that the purpose of schools is education and that no child is being served if education is being made impossible. School authorities must make clear when they believe that pupils are being used as pawns in the struggles of adults. The question to be asked about all proposals is whether they will improve the education of the pupils involved, not whether they will contribute to other goals, even desegregation." [31]

On the other hand, there are many *symptoms* of such ills which are apparent within our schools, such as children from broken families, from different racial background, of uneducated parents, and children from depressed areas who present special problems in the schools. These problems are educational in nature and must properly be attacked on an educational basis within the framework of the school itself.

The pure sociologist, as distinguished from those with educational background, and other allied groups see nothing but the basic social illness and charge helter-skelter in pursuit of a cure. If legal rights of others be trampled in the process, then that is unfortunate. If education be damaged, that is a price he's willing to pay. If States rights reserved under the Tenth Amendment to the Constitution be overwhelmed, that concerns him not at all.

The causes of social problems are widespread, they have been a century or more in creation in this country, they will be here a century from now. As stated by Solicitor General Sobeloff in Brief of United States (page 7) in *Brown* 2:

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[31] *De facto Segregation* from *American Education and Search for Equal Opportunity*, official publication of the National Education Association (App. p. 158b).

"It must be recognized that racial segregation in public schools is not a separate and distinct phenomenon. It is part of a larger social pattern of racial relationships. The Court's decision in these cases has outlawed a social institution which has existed for a long time in many areas throughout the country—an institution, it may be noted, which during its existence not only has had the sanction of decisions of this Court but has been fervently supported by great numbers of people as justifiable on legal and moral grounds."

A pure sociologist should never be confused with an educator.[32]

This group of pure sociologists is referred to by A. Harry Passow as "behavioral and social scientist" while those with "immediate and direct responsibility for operating (school) programs effectively from day to day" are collectively called by him "school people." [33]

There seems to be a consensus expressed by Dr. Passow that the proper attack on the basic illness is a communitywide attack on the basic causes while the schools have the job of concentrating on preventive and compensatory efforts. Compulsory integration or racial balancing is not seen as the answer, but rather enrichment of the educational effort.[34]

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[32] In the *Jefferson County* decision the Fifth Circuit failed to make this distinction in its consideration of the Guidelines. The Court stated in this case that the Guidelines were "prepared and formulated by educational authorities" and further "are prepared in detail by experts in education and school administration." A reading of the Guidelines reflects that such document is related to education only in the sense that it applies to schools. Further, the document speaks for itself that it is in fact a directive or regulation with one objective, compulsory integration of schools. The author is not named, but obviously the Guidelines is the work of those sociologically oriented.

[33] *Education in Depressed Areas* (App. 1b).

[34] See page 47 for footnote 34.

The use of the neighborhood school is strongly supported by Prof. Robert E. Mason in his *"A Theory for Urban Education"* (App. p. 141b). Rather than urging the moving of pupils for such purposes as racial balance, it is seen as better to keep children in their own neighborhood where they can be reached by all social agencies working for the betterment of the neighborhood. Likewise is the view of Dr. Archibald B. Shaw who says in *"The Neighborhood School"* (App. 28b):

> "To one view, the scrambling of kids by some impossible formula destroys the potential of the neighborhood school for every neighborhood and doesn't yield genuine gain for anyone. To such a view, neighborhoods and their sociology are all that stand between us and a mass, de-humanized, overpowering society."
>
> "The problem is with us, in cities large and small; all over the nation. Destroying the neighborhood school is not the answer. What is needed is the will and wisdom, to mount a concerted attack on the deficiencies of the neighborhoods and to make drastic improvements in the appropriateness and effectiveness of their schools." [35]

Reference is made to an opinion poll published in *"The Nation's Schools,"* under the direction of its editor Robert M. Cunningham. Of school administrators sampled, ninety-one per cent were opposed to transporting

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[34] Lincoln School in the City of Jackson is a typical example of enrichment efforts in schools serving those areas considered depressed. Since Title I funds have been available, in this school alone approximately $53,290.00 in such funds have been spent in enriching the Educational Program of this school in new equipment, and in new teachers. In addition to the new equipment, the teacher-pupil ratio has been reduced to 1:25 as compared to 1:31 in 1965-66. Report to Title I Division, Tennessee State Department of Education.

[35] See also *"Assimilation in American Life"* (App. 33b).

students to eliminate de facto segregation (App. p. 31b). Eighty-four per cent approved the neighborhood concept.

The requirement of racial balance militates against the educational development of the underprivileged child,[36]

No less an authority in education than Dr. James Bryant Conant agrees that compulsory integration serves no purpose, educationally or otherwise.[37]

As a practical matter, and somewhere along the line the decision in this case will have to be applied educationally, an order of this Court requiring compulsory integration or racial balancing in Jackson Schools, whether stated affirmatively or simply backed into by requiring a similar result on the semantics of a positive requirement of negative action, will produce immediate and vast repercussions on the Jackson School System.

A glance at the map (Ex. 11) will show that Lincoln, Washington-Douglass and South Jackson Schools are in the center of Negro neighborhoods. The attempt to legally compel white children to attend those schools will produce one immediate result, the white people will leave, to private schools or anywhere else available to them.[38]

The Court can simply look out of the window at the

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[36] See *"Desegration Creates Problems, Too,"* by I. N. Berlin (App. p. 65b) and *"Educational Problems of Segregation and Desegregation,"* by John H. Fischer (App. p. 71b).
"The Goals of Integration" by Oscar Handlin (App. p. 82b).

[37] *"Slums and Suburbs"* (App. p. 105b).

[38] The Jackson, Tennessee Housing Authority was required beginning July 1966 to compulsorily integrate the Projects under its control.
In July 1966, there were 845 units occupied by 435 Negro families and 410 white families on a segregated basis. Today the occupancy is 570 Negro families and 257 white families.
White applicants have dropped to near zero. The whites remaining are mostly very elderly or otherwise handicapped who are unable to leave.

Washington, D. C. schools to see what happens when desegregation places white students in predominantly Negro schools or forced integration occurs—where are the white students in Washington, D. C. schools? [39]

If the experience in Jackson, Tennessee should prove to be similar to the experience of Washington, D. C. and every other major urban area in the United States where compulsory integration has been applied, Jackson can look forward to abandoning *at least* three modern schools with a reasonable value of four million dollars.

Jackson does not believe it can compel or otherwise force integration of those schools named. There is no real way out of this dilemma. Even the replacement of the schools in border areas with new schools will produce such a high percentage of mixing that the exodus will continue. The replacement of those abandoned schools with schools in border areas will cost approximately eight million dollars which Jackson does not have. So the City of Jackson, Tennessee would be required to assume a twelve million dollar loss—in modern schools it can't use and in new

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[39]State and city	Total elementary students	Total white students in elementary schools: Number	Total white students in elementary schools: Percent of total elementary students	Total Negro students in elementary schools: Number	Total Negro students in elementary schools: Percent of total elementary students	Negro students in schools 90 to 100 percent Negro: Number	Negro students in schools 90 to 100 percent Negro: Percent of total Negro elementary students
District of Columbia—							
Washington:							
1965-66	91,994	8,308	9.0	83,686	90.9	75,688	90.4
1960-61	80,279	13,498	16.8	66,781	83.2	55,806	83.6
1955-56	67,384	22,415	33.3	44,969	66.7	33,055	73.5
1950-51	59,398	28,527	48.0	30,871	52.0	30,871	100.0

1966-67; 1967-68 not available

Racial Population in the Public Schools, a Report of the United States Commission on Civil Rights 1967, Table A.3, page 12 Appendices.

schools it doesn't need—for what purpose? To try and provide an integrated education to its Negro students—something that is available right now, and has been for over two years, to every single Negro student in the City of Jackson who desires it.

The argument can be made that all white children cannot afford private schools and that is true. The poverty area white and the underprivileged white—the Negro has no monopoly in these fields—will remain and there will then be created an integrated school composed of all classes of Negroes and a few underprivileged whites.

For the moment let's leave the Court house and enter the school house. When we leave the Court house the class action stops. When the school house is entered, the children become individuals. *There is no educational area in which sweeping generalizations can be applied to every student.* Each student is a special case, what is helpful for one student is harmful to the next. Some need firmness, some react badly to firmness, and so on. There are three words which are absolutely essential to the achievement of an effective education program—the words are *"For this child."* School administrators grade on the basis of these three words—they assign work based on what is normal "for this child," they accelerate or slow down progress determined by what is good "for this child." Those three words control all educational processes related to the individual child. There is no other way to deal with the individual child.

It is therefore completely reasonable to measure the implications of compulsory assignment of children, for such purposes as attaining racial mixing, by the same criteria. The parents of the Negro children in the Jackson School System each year make such a determination as to what is good for their own child. Is it to be considered that

the parents lack the will or the intelligence to select wisely for their own children just because they are of the Negro race? Such a conclusion would be a gratuitous insult to the Negro Americans everywhere. It also is abundantly plain that while an integrated education may be desirable for one child it may be totally damaging to the next. Each child is, and must be handled, as an individual, no sweeping order will change that fact. Without doubt, compulsory integration will act both ways. Some may be helped, many will be damaged.

Efforts have been made to offer every student in the school system at Jackson the non-discriminatory right to obtain a desegregated education, free and unfettered by discriminatory laws or discriminatory administration.

Plaintiffs' objection, however, is that *all* Negro students are not attending school with *some* white pupils. This case clearly demonstrates that just as some white pupils do not desire to attend school as a small minority at a predominantly Negro school, almost as many Negro pupils—in fact more Negro pupils on a percentage basis—desire to attend school with members of their own race. Consider the following categories:

A. All Negro pupils who sought transfers to a predominantly white school from the predominantly Negro school serving the neighborhood in which they live received such transfer.

B. All Negro students who sought transfers to a predominantly Negro school, though they were zoned to a predominantly white school serving their neighborhood, received such transfer.

C. All white pupils who sought transfers from the predominantly Negro school serving their neighborhood to a predominantly white school received such transfer

D. No white pupils sought transfer out of their predominantly white school serving the zone in which they live to a predominantly Negro school.

Let us now discuss each of the above categories in the light of the relief which plaintiffs and amicus curiae United States seek. That relief includes the elimination of the free transfer provision so that all assignments will be rigid and inflexible.

As a preface to such discussion, it is noted that the transfer right is termed a "free transfer" and there is perhaps no word in the English language so respected by the Courts as "free" and "freedom." As long as the desegregation process is tempered with freedom, it will succeed. Once freedom is removed, this process stands at the threshold of failure.

A. Negro Pupils Transferring For a Desegregated Education.

This first group; namely, those Negro pupils who exercise the privilege granted to them to obtain a desegregated education by virtue of the free transfer policy will be the victims of the elimination of such policy. The Jackson School System under its free transfer policy grants these children the right to obtain an integrated education. If Plaintiffs and amicus curiae succeed in persuading the Court that the free transfer policy is but a subterfuge to preserve segregation, thus should be declared unconstitutional, then these students and many tens of thousands of such students similarly situated throughout the South will be denied the right to attend school with children of another race.

B. Negro Students Seeking Transfer to a Predominantly Negro School.

The fact that all Negro pupils who applied were granted transfer to a predominantly white school is fairly clear evidence that the free transfer provision is administered fairly by the school system. What, then, is the explanation that these Negro pupils who were assigned to predominantly white schools sought transfer to a predominantly Negro school? Certainly it is not coercion by the white community since the number of transfers by Negroes to a white school has grown rapidly in the three years that this plan has been in effect. Plaintiffs do not even contend there is coercion.

This circumstance can best be explained on the basis that the parents of these pupils feel that their children will obtain a better education in a school with members of their own race.

Plaintiffs and amicus curiae would have this Court deny the pupils and their parents this right. They would have the Court render an opinion that would compel these pupils to remain in the predominantly white school to which they had been assigned. It makes no difference to Plaintiffs whether the children are happy or whether the parents feel that their children are obtaining the best education possible. That is not the issue so far as Plaintiffs are concerned. The cure to all ills, they say, is compulsory integration for these children while denying to those Negro children described as Class A the right to obtain an integrated education. No single factor could be more educationally and emotionally detrimental to these children than to compel them to attend a school where they are dissatisfied with either educational conditions or their environment. As this Court knows, one of the great problems in education is the dropout and this problem will be

multiplied if compulsory attendance is required on some constitutional ground. The dropout of one or thirty of these Negro pupils would do far greater damage to this country than the fact that a few white people might escape for a short period of time the requirement that they attend the predominantly Negro school serving their neighborhood.

C. White Pupils Transferring From the Predominantly Negro School.

In the two sections immediately above, we have seen that all Negro pupils have been granted transfers in the Jackson School System to the school of their choice. White pupils have been accorded this same privilege under the free transfer policy and we respectfully submit that these are the pupils whom plaintiffs and amicus curiae seek to restrict in their attack on the free transfer policy. As we have stated in an earlier section of this brief, unless you accord to the white community the freedom assured them by the free transfer policy, you can have only one result—the flight to the suburbs. Plaintiffs' objective, therefore, would be a fleeting victory—a victory that lasted only long enough for those whites who were in a predominantly Negro zone to locate their residence elsewhere.

Faculty.

While faculty presumably is not before this Court in view of the Sixth Circuit remand to the District Court, the implications of a compulsory integration order of this Court directly relates to faculty. If the Court orders compulsory integration of the system, it should be borne in mind that there is one vast difference between students and faculty. Compulsory attendance laws can herd under-

privileged students around and compel such students to remain where assigned. What law is there to compel the faculty member to stay where assigned if such assignment is personally unacceptable to such teacher? This is an area in which incalculable educational damage resides.

Jackson's problem would be great, but perhaps small when compared to the problems of this type which would exist in the large cities of the North and East, and in other areas of the Country where the white population is equalled or surpassed by the Negro population. In the large cities all-Negro schools exist everywhere.[40]

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[40] The following information is compiled from reports filed with the Office of Education, H. E. W., 1967.

Cincinnati, Ohio

Total number of schools 104

Schools with all-white student enrollment	6	Schools with all-Negro student body	1
Schools with virtually all-white student enrollment (from 1 to 4 Negroes in each school)	14	Schools with virtually all-Negro student body (from 1 to 4 white students in each school)	6
Schools with all-white teachers (Includes one school with all-white student body)	3	Schools with all-Negro teachers (all with some white students)	3

[The United States Office of Education advised similar information for the District of Columbia, New York City, Chicago, Gary, Detroit and St. Louis was not available "either because it has not been received or has not been processed by the National Center for Educational Statistics O. E."]

Reference is therefore made to a report of the United States Commission on Civil Rights 1967 entitled *Racial Population in the Public Schools* (p. 3) for the latest (1965) available information:

"Racial concentration also is severe within the central cities. Table 1 (p. 4) shows the extent of elementary school segregation in seventy-five cities. In these cities 75% of the

(Continued on following page)

If the existence of a school with exclusive Negro enrollment, not the result of discrimination, is constitution-

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(Continued from preceding page)

Negro students are in elementary schools with enrollments that are nearly all-Negro (90% or more Negro), while 83% of the white students are in nearly all-white schools. Nearly (p. 5) 9 of every 10 Negro elementary students attend majority-Negro schools. The high degree of racial separation in the schools shown by these national figures is found in the North as well as in the Southern and border States. In Buffalo, New York, for example, 77% of the Negro elementary school children attend schools that are more than 90% Negro (p. 6) while 81% of the whites are in nearly all-white schools (90% or more white). In Gary, Indiana, the figures are 90% and 76% respectively. Again, in the North the proportion of Negro children in majority-Negro schools often equals or exceeds the national average. In Flint, Michigan, 86% of the Negro elementary school children are in majority-Negro schools; in Milwaukee, 87%; in Chicago, 97%.

A high degree of racial separation of Negro students frequently prevails regardless of the size of the school system. Examples from Northern and border state school systems are illustrative. Kansas City, Missouri has an elementary school enrollment twice as large as Fort Wayne, Indiana, yet in each city more than 60% of the Negro children are in nearly all-Negro schools. Detroit, Michigan has an elementary school enrollment almost four times as large as Newark, New Jersey, yet in each city more than 90% of the Negro children are in majority-Negro schools."

This report also indicates a similar situation as to teachers in the Negro schools.

"(footnote 32 on page 7 of the Report) A similar racial pattern exists for teachers. In Chester, Pennsylvania 101 of the 112 Negro elementary school teachers in the school system in 1965 taught in schools that were 90 to 100% Negro. In Buffalo, New York of the total of same 200 Negro elementary school teachers, 80% taught in 90 to 100% Negro schools in 1965. In Indianapolis, Philadelphia and Chicago, more than 90% of the Negro elementary school teachers taught in majority-Negro schools in 1965. In border state school systems an even greater proportion of Negro teachers are found in nearly all-Negro schools. In Baltimore, for example, more than 85% of the more than 2,000 Negro elementary school teachers taught in schools that were 90 to 100% (p. 8) Negro in 1965. In St. Louis, all but 73 of the nearly 1500 Negro elementary school teachers taught in 90 to 100% Negro schools in 1965."

ally wrong in Jackson, Tennessee, it is constitutionally wrong everywhere. To hold otherwise would be to deny separated Negro students in other areas of the Country equal protection under the Fourteenth Amendment. The transportation of students in the city areas to acquire racial balance or mixing in schools will perhaps be more traumatic than in other areas of the Country. The most demanding need now is for greater monetary support to upgrade and enrich education, especially in depressed areas. The loss of funds for basic education diverted to attain a racial balance will be nothing short of tragic.[41]

V.

CONCLUSION.

It is clear that this Court in the *Brown* cases has condemned *"discrimination"* based on race. It is likewise abundantly plain that this Court said nothing more.

Defendant submits that the Jackson, Tennessee School System is operating free of racial *"discrimination."* Naturally the question of faculty has yet to be resolved in accordance with the remand of the United States Court of Appeals (6th) but whatever may be the outcome of such proceeding, it goes without saying this Defendant will comply with it.

Then why all the confusion about what this Court did or did not do?

First of all, a Court decision opening a new field of law is considered Pandora's Box by special interest groups. This continues until the Court convinces all concerned that it had the ability to and did say what was meant to be said and all that was meant to be said.

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[41] See article by Jim Hampton on Chicago problem (App. p. 134b).

The real Plaintiff in this case simply wants more now than at the time the case was decided. If they succeed in this case, they will be back tomorrow for more. There is also a great temptation for those in the political arena to try to capitalize in this field by speculating on what the Court "really" meant, notwithstanding the full ability of this Court to express what it meant. This speculation is reflected in the action of some agencies active in this field. It also serves to give unjustified support to national groups such as the actual Plaintiff in this case, as distinguished from the nominal plaintiffs named in this proceeding, to seek more and more and to sue and sue.

All that is needed to bring order out of beginning chaos is the simple statement from this Court that it affirms the action in this case of the United States Court of Appeals for the Sixth Circuit. This will clear the air everywhere and end the multiplicity of suits filed and being filed in hope of what this Court will some day say.

This Defendant respectfully urges this Court to take the opportunity offered by this appeal to firmly and uncompromisingly return the public schools of this nation to the control of professional educators. For too long our schools have been buffeted by the sociologist, the ethnologist, the politician, the welfare worker and the reformer. No disrespect is intended to any group classified above who no doubt are well intentioned in their own field, but the schools should not be their crucible. The 1954 decision of this Court has been accepted just about everywhere as it should be. It certainly has in Jackson. Our schools need now to be allowed to get on with their job, to be removed from the combat arena of Civil Rights, poverty and similar social disturbances.

A careful reading of the Plaintiffs' brief in this case—and now the Amicus Curiae brief of the United States—

reveals rather plainly that neither party really seriously contends this Court commanded compulsory integration in *Brown* or that racial mixing was required by those decisions.

Neither party denies that a very substantial amount of desegregation has been accomplished in Jackson, Tennessee. There is no contention at all about discrimination. There is no really serious contention about gerrymandering of zones, being simply referred to in passing.

Both parties point to the existence of some all-Negro schools but neither has been able to point to any factor as causing the all-Negro schools except the fact the schools are there because every single Negro student therein chose to be there—by the exercise of an absolutely free choice.

These parties are here seeking to have this Court *re-interpret* the Constitution of the United States—or find a means to justify the end result they seek. This Court in *Brown* has already carefully and concisely interpreted the Constitution of the United States on this very question. As an earlier generation waited from Saturday to Saturday to see how Pauline would fare, so these parties seek to have this Court serialize Constitutional interpretations.

The rock on which this Nation is founded is the Constitution. This approach to the Constitution will change rock to sand.

The City of Jackson, Tennessee is operating its School System in a Constitutional manner within the meaning of the decision of this Court in *Brown* and, therefore, this Defendant prays:

1. That the decision of the United States Court of Appeals for the Sixth Circuit in this cause be affirmed.

Respectfully submitted,

RUSSELL RICE, SR.,
Attorney for Respondents.

SUPREME COURT, U. S.

MAR 16 1968

JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1967.

No. 740.

BRENDA K. MONROE, *et al.*,

Petitioners,

v.

BOARD OF COMMISSIONERS OF THE CITY OF JACKSON, TENNESSEE, etc.,

Respondents.

APPENDIX TO RESPONDENTS' BRIEF.

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EDUCATION IN DEPRESSED AREAS

by A. Harry Passow.*

(332**) The work conference united for two weeks two groups with a professional interest in the complex problems of education in centers, especially in their depressed areas.[1] One group, the conferees, consisted of "school people" with immediate and direct responsibility for operating programs effectively from day to day and for providing leadership for long-range educational planning. The second group, the speakers, included behavioral and social scientists disposed to separate from the aggregate of school problems those aspects they could study systematically. These specialists were asked to report research dealing with a particular phase of education in depressed urban areas, to present theoretical assumptions, and to confront the practitioners with the implications for educational planning. The hope was that such a bringing together of theorists and practitioners for two weeks of intensive interaction would generate, first, understanding of each other's concerns and ways of working and, second, better formulation of problems and programs.

Academic achievement and personal attitudes towards self and community—these focused much of the

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*B.A., New York State Teachers College; B.A. (cum laude), ibid; M.A., Columbia University; Ed.D., Ibid.

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** The boldface figures in parentheses throughout this appendix indicate the pagination of the original publication or transcript, and precede the pages so indicated. Emphasis throughout is in accordance with the originals.

[1] I am indebted to Mr. David Elliott for his assistance in the preparation of this chapter. Mr. Elliott's notes and summaries were especially helpful.

discussion. The most central questions were of this order: What are the significant differences between those students who do and those who do not achieve academically, have high educational and vocational aspirations, and conform to broad societal norms? What causes these differences? What will overcome the academic and other deficiencies which plague children and youth from depressed areas? What is the school's particular role of prevention and rehabilitation? There is the temptation to explain these differences solely in socio-economic terms—middle-class children achieve, in general, at a higher level than lower-class children; teachers tend to be middle-class oriented, as is the curriculum of the school. However, the conference discussions (333) rejected as too narrow and sterile an analysis which deals only with socio-economic status, only with ethnic or racial minority status, or only with in-migration and urbanization as separate and dominant stands. Some general ideas emerged from the discussions, which seem basic to many other proposals or hypotheses.

Coordinated, Multi-Level Approaches Are Needed

Many images might clarify the various distinct, interrelated levels of involvement and social organization which offer explanations, plans, and programs for overcoming gaps in individual achievement and motivation. One possibility is to view the young learner as the bullseye of a series of concentric forces which influence his attainment. With the child at the hub, the concentric spheres might be these:

The child, with his genetic potential; his experiential background; his stage of intellectual, emotional, and personality development; his attitudes and values; his self-image and view of himself in relationship to others.

The family of the child, as well as his other immediate primary (peer) groups; ethnic and racial group characteristics; newcomer or old-resident; socio-economic and educational level; family stability, including the absence

or presence of positive male models or matriarchy; extent of acculturation to urban setting.

The neighborhood in which the child and his family live; its religious, social, political, and economic characteristics; the nature of the housing available; the relationships with other neighborhoods, in the city; the sense of social health.

The school and *the classroom* which the child attends; student population, staff, program; the resources available in implementing the program; teacher characteristics and expectations; curriculum goals; the school climate.

Other agencies and institutions active in the neighborhood and the larger urban setting, such as community centers; welfare agencies, health and medical facilities, public and private; personnel, programs, organizational characteristics; working relationships among institutions and agencies; power and decision-making forces.

City and larger metropolitan area—social, economic, and political characteristics; relationships among various units and divisions within the area; relationships with surrounding areas; effectiveness in solving problems.

Larger regional, national, and international setting—social, political, economic characteristics; relation of its philosophy to local education goals and budgets.

(334) Each of these major spheres is constructed of intricate details. For example, economic conditions depend on such factors as the labor market, discrimination in employment, availability of trained personnel, automation; industrial output, over-all business developments, international conditions. The various levels are, of course, interrelated, somewhat mutually limiting and equally significant for planners, because the plans cannot be fully implemented by operations at any single level. For instance, classroom modifications by a single teacher may be futile unless supported by the climate of the school, the neighborhood, and the family.

Since planning and involvement take place at different levels, coordinated efforts are required of many

groups, agencies, and institutions. There are limits to the possible impact of a program at any level if that program ignores the multidimensions of the problems of urban life. Several papers emphasized the need for integrated planning aimed at altering the conditions in the school, the home, the community, and the urban area as a whole, involving health, educational, social, economic, political, and religious agencies and institutions in the process. This idea of "multiphase approach" does not mean that smaller, more restricted efforts are doomed to failure but, rather, that such plans must be weighed realistically in terms of their potential.

The Health and Welfare Council of the Baltimore Area sees the implications for action to capitalize on the total resources of the community as follows:

* * * it will require a *comprehensive and coordinated* approach rather than a piecemeal attack;

* * * it must envision *experimentation, integration, self-analysis, and innovation* as well as coordination and intensification of existing services;

* * * while leadership must come from those agencies which offer direct services to people, successful prosecution will require *wide community support* and commitment;

* * * if real impact upon serious community problems is to be made, *the effort must be carried beyond the area and time of a single demonstration* (2).

Differentation Between Preventative and Remedial Programs

Throughout the conference, it was emphasized that in the search for factors that influence achievement, distinctions need to be made between practices which are primarily *preventative* and *developmental* and those which are essentially *compensatory* and *remedial*. For example, at the junior high school level, academic retardation may be so severe that programs must be mainly remedial in nature, to compensate for past school failures. With the younger child in nursery, in kindergarten, or

even first grade measures are more likely to be preventative in nature, designed (335) to prepare the pupil for school achievement and the avoidance of remedial procedures. The philosophy behind a program—prevention or remedy—affects the points of emphasis, the methods to be used, the organizational arrangements and the levels of involvement.

The preventative aspects imply modifications and adaptations of programs and services to help the child hurdle his educational handicaps, cultural limitations, inarticulateness, short attention span, underdeveloped abstract-thinking abilities, lack of motivation for academic success, and similar deprivations that hobble a child's scholastic development. Unless steps are taken to compensate for these shortcomings, retardation and failure inevitably will raise a demand for remedial projects. Because success in reading and other language arts constitutes the key to academic progress, most programs stress methods, materials, special personnel, and other audio-visual and guidance services to improve as the verbal and other basic skills.

Remedial services have many different aspects. Most familiar is remedial reading instruction for pupils who lack facility in this field. Reading clinics may be established for the diagnosis and treatment of severe reading disabilities. Special service personnel of many different kinds may work either with children or with classroom teachers. For example, the New York City system assigns to schools in depressed urban areas teacher-specialists in remedial reading, science, mathematics, and core curriculum; guidance specialists, teacher trainers, Puerto Rican coordinators, behavior attendance counselors, and substitute auxiliary teachers (Spanish-speaking teachers who aid the regular classroom teachers with English instruction). Dade County, Florida, employs a team of a certificated American teacher and two bi-lingual Cuban-refugee teacher aides to work with approximately sixty Cuban-born youngsters whose English is too limited for the regular classroom. Similarly, New Haven has appointed "help-

ing teachers" who are relieved of some of their regular teaching assignments to provide leadership for a teaching team to work with a specific group of students. The helping teacher works with other teachers in the development of materials and methods of instruction. These programs illustrate how supplementary personnel can aid in upgrading reading achievement by improved instruction and remedial assistance.

The Quincy, Illinois, program of enrichment in the primary grades is essentially preventative in intent. It seeks to determine whether more time with a single teacher, an extended kindergarten day, and work with parents will make a difference, especially in reading and in attitudes toward school. Will such a program reduce the number and severity of (336) behavioral problems, preferably before they become delinquency? Many children see themselves as failures, thanks to early defeat in school. The lethargy, negative self-image, and loneliness patterns lead to further failure and eventually hostility, escapism, and aggression as the child grows older. At the kindergarten-primary level, the problems are perceived as lack of those success experiences which contribute to positive self-concepts. Early thwarting of deficiencies, it is hypothesized, may avoid the need for remedial services later.

Building Early Readiness for School Work

Several papers focused on the need for programs to develop certain intellectual, language, and learning traits in children to help them anticipate and handle school tasks. Professor Deutsch emphasized the factors in the pre-school milieu which sentence the lower-class, deprived child of impoverished family to almost certain initial failure. Thus, the negative concept of school is reinforced. Professor Goldberg suggested that the school may be the most accessible place to breach this circular negative-reinforcement process and to compensate for the ineptness toward learning.

Action guides emerged as follows: Early intervention programs, such as nursery and pre-kindergarten classes,

day-care centers, and similar pre-school arrangements should aim to promote readiness for formal school instruction. School-centered compensatory activities, from nursery through primary grades, would provide experiences generally absent from the home and neighborhood of disadvantaged children. These would attempt to offset the experiential poverty that affects what Deutsch calls the "formal, contentual, and attitudinal systems" of the child. Educators would adapt school programs, materials, teaching methods, and organization to differences in children's learning styles and cultural expectations, rather than treating all differences as handicaps and deficiencies. Various curriculum modifications aim at broadening the child's experiential base and increasing his ability to express himself verbally. Parents should be involved in an educational program beamed at a higher level of home management and child care, at increasing the parent's desire and skills for enriching the background of the child with a minimum of disruption of ongoing family life. Direct help will be channeled through pre-school curricula, possibly through increased use of educational television and other media for communicating with busy parents.

To sum up, promising ways of overcoming immaturity are embodied in enriched pre-school and kindergarten activities designed to develop auditory and visual discrimination, verbal expressive ability, sustained (337) attention, observation skills, ability to follow directions, and a generally receptive learning style. Beyond this stage, the follow-up in primary years must feature study and experimentation with revised methods for teaching reading; increased use of different materials; emphasis on verbal and symbolic experiences; small group and individualized instruction; adaptation of methods to different learning styles. Such programs may require postponement of formal instruction in favor of developing learning-how-to-learn skills and motivation for successful achievement in reading and arithmetic. The need for pre-school education of both children and parents is quite clear; the structure of such programs is not quite so clear. Preventative programs rich in materials, day-care centers or publicly

supported nursery schools, early school attendance, parent education programs, and similar efforts would demand either multi-agency coordination or a drastic expansion of present school functions. To be resolved would be the problems of funds and facilities, plus recruiting and training personnel whose roles would contrast with those of present teachers.

Speeding Acculturation to Urban Life

Professor Ravitz pointed out the cultural differences between recent in-migrants and established city residents and the consequent cultural conflicts. Just as the reasons for the various waves of immigration in the past varied, so the impetus for migration from rural areas to cities varies. Speaking of Southern Appalachian migrants, Porter pointed out that while they are white, native, Protestant Americans of several generations' standing, they are still different "in speech, in dress, in culture, in habits and mores, in education, in social status, in work experience, and in health" (4). The impact of the required adjustments may subject such a family to "cultural shock" as grim as any foreigner's.

Rural-urban migration breeds one set of problems; race and nationality create others. Ausubel maintained that ego development among segregated Negroes suffers from "differences in interpersonal relations, in opportunities for and methods of acquiring status, in prescribed age, sex, class, and occupational roles, in approved kinds of personality traits, and in the amount and type of achievement motivation that are socially sanctioned for individuals of a given age, sex, class and occupation." The psychological, emotional, attitudinal; aspirational unity of the child who grows up in the depressed area—what has been called the "slum complex"—enters the classroom. But, there are other behavioral aspects of children from depressed areas: the realities of life have matured him faster in certain respects; he may be more vigorous and spontaneous in expressing his emotions; his language may be more colorful, if less grammatical; (338) and he may

have learned the strengths which come from group support and cohesiveness.

How can the school contribute most effectively to the urbanization of the new arrival? How can it acculturate the lower-class child—teach him middle-class skills so that he can cope with the problems of living and earning a living in the middle-class-dominated city? Two answers come from Wilmington and New York. The Wilmington Public Schools project has highlighted human relations, in terms of diagnostic techniques and instruments to help children understand and develop skills as group members. The focus of classroom activities has been on helping children develop concepts about family, neighborhood, groups and community as a basis for improved behavior in social situations. The 5-year Puerto Rican Study in New York City created for teachers published guides and resource units which melded learnings about living in the city with the traditional basic skills required for success in school.

Changing the School and Neighborhood Climates

Professors Havighurst and Wilson both examined the effects of social class composition of the school neighborhood on the behavior of both the students and teachers. Both agreed that predominantly lower-class neighborhoods produce schools in which children achieve less well and have lower aspirations, both educationally and vocationally. Havighurst argued that students of the sociology and psychology of education concur that "the fact of attending a lower-class school does have something to do with the lower academic achievement of the pupils from that school." Wilson presented evidence of lower-class areas and described some of the impact of school climate as it affected the attitudes of students and their aspirations. Havighurst, concluding that neighborhoods with too low a "status ratio" (that is, too small a proportion of middle-class to lower-class children) tend to produce inferior results, suggested that planners do more to develop all-class communities and mixed-class schools. Some individuals accepted this documented evidence, but

expressed caution about the propriety and the possible consequences of the school's attempting to alter these conditions.

The school may choose from several courses of action: making drastic internal improvements to enable itself to function as a lever for upgrading the standards of the area as a whole; or serving as the catalyst for "social urban renewal." Perhaps an excellent illustration of the former approach is the Banneker Group schools of St. Louis, under the leadership of Dr. Samuel Shepard, Jr., assistant superintendent. Dr. Shepard administers the twenty-three elementary schools in one of the city's most depressed (339) areas with a population 95 per cent Negro. Except for four "borrowed" teachers who help prepare materials and charts and who participate in the guidance aspect, the Banneker program operates without extra personnel or financial resources. In a sense, Banneker is not a program but rather a continuing challenge to the entire community —children, parents, teachers, administrators, and others —to strive to do better because they are capable of doing better now.

By literally saturating the district with parent meetings, communications of all kinds, and radio programs, Dr. Shepard has influenced significantly the community's attitudes toward the importance of education and toward understanding the need for higher school achievement. In each school, assemblies, contests, field trips, and radio programs (including a mythical character named "Mr. Achiever") urge children to attend regularly and to work for higher accomplishments. Beginning with the signing of a "Parents Pledge of Cooperation," parents are advised how to help their children schedule homework time, how to provide proper facilities and atmosphere for home study, how to "get tough" about finishing homework. "Hints for Helpful Parents" itemizes suggestions for parents. Children in the area are surrounded by the motto: "Success in School Is My Most Important Business," with achievement charts for extra reminders. Non-school agencies allot homework time in their programs. Teachers are instructed to "stop teaching by the IQ score," to abandon their atti-

tudes of condescension toward the children, to keep standards high and to help the children attain high standards. Even the area merchants are enlisted; they discourage loitering and truancy during school hours and display educational materials.

Anything that will inculcate a respect for learning, enhance pride in academic achievement, boost morale of students and staff, and alert children and parents to new opportunities for Negroes is viewed as worth trying. Under the charismatic, dedicated leadership of Dr. Shepard, the schools have become the antidote for some of the defeatism of slum living. No administrative means are used to integrate the schools racially or alter the status ratio of middle-class to lower-class students. Instead, the program operates on the premise that educationally qualified individuals will find work and therefore, a socio-economic upgrading as well.

New Haven's Opening Opportunities Program involves five large-scale renewal projects which will include replacement of the city's fourteen oldest school buildings. The rebuilding involves relocation, homemaking, education, and housing programs aimed at promoting social goals. Community schools, operating 12 to 15 hours a day on a year-round basis, serving all races, creeds, and classes, will be the instruments (340) for an integrated and total approach to neighborhood needs. The school's basic roles will multiply, becoming those of an educational institution for children and adults; a neighborhood center for leisure and recreational activities; headquarters for community services such as health clinics, family and employment counseling, legal aid and other social and welfare services; and a focus of neighborhood life for confronting and resolving problems.

New York City's Commission on Integration recommended that one cardinal consideration in the selection of a site for a new school building be its effect on preserving or promoting ethnic and racial integration. Other criteria follow, such as "distance, topological features, transportation to existing school plant and pupil population destiny" plus other fiscal and real property considera-

tions. Population shifts and neighborhood changes—rapid and unpredictable—retard integration in elementary schools, particularly in the fringe areas. The "open enrollment" plan wherein youngsters from schools with heavy concentration of Negro and Puerto Rican children are transported to predominantly white, middle-class schools is still being assessed in terms of its effects on both sending and receiving schools. Professor Goldberg's paper indicated that, from the little evidence available, the gains one expects from unsegregated contacts is not automatic.

What is the critical status ratio or "toppling" point in the proportion of advantaged to disadvantaged children—in-migrant, racially different, lower-class—above which school and/or neighborhood climate changes? What are the crucial factors operating? Are efforts at changing the social composition of a school and neighborhood more promising than efforts aimed at changing only the educational program? While the regional high schools Professor Havighurst recommends are probably easier to set up than integrated elementary schools, is the secondary school too late to overcome the effects from a lower-class, segregated school in a depressed area? In his paper, Dr. Fischer argued against a school system organized primarily on racial criteria; he would provide for maximum free choice for all children, limited only by unnecessary overcrowding. Dr. Fischer was disturbed by "the growing pressure to locate schools, draw district lines, and organize curricula in order to achieve a pre-determined racial pattern of enrollment." The consequences of alternative approaches on children, families, staff and community require further study.

Curriculum Modifications Are Essential

The academic performance of children from depressed areas, so marked by scholastic retardation, demands curriculum reappraisal in (341) depth. To begin, a thorough analysis of educational goals can determine their appropriateness for disadvantaged children and youth. Does "equal educational opportunity" change its meaning when

linked to the concept of compensatory services and experiences? To what extent would these children's needs for acculturation to urban life affect the curriculum objectives? What unique aspects of urban life lend themselves to the curriculum as resources? Are goals dealing with personal and family life; with basic citizenship and social skills; with understandings of the cultural, political, social, and health frameworks more urgent for the disadvantaged child than for the middle-class child?

Americans generally resist the notions of different education for different classes, of education as the gateway to socio-economic mobility, of class barriers to educational opportunity. And yet, the idea of equal educational opportunity, the desire that all children "with their human similarities and their equally human differences, shall have educational services and opportunities suited to their personal needs and sufficient for the successful operation of a free democratic society" (1), remains a commitment for the public schools. Such an ideal of individualized instruction implies recognition and acceptance of variations in both ability and needs among the public school population.

If, despite the normal spread of educational ability, large numbers of children are not achieving, are not learning the basic skills required for academic success, are failing to develop their talents to the fullest, then educators must not lower the goals or write off blocks of children as non-achievers. McClelland, discussing the approaches used to identify gifted students, suggests that far too much emphasis has been put on talent potential as a fixed attribute. Instead, "talent potential may be fairly widespread, a characteristic which can be transformed into actually talented performances of various sorts by the right kinds of education" (3). Developing an understanding of "the right kinds of education" is basic to helping youngsters from depressed areas realize the objective of equal opportunity. The aspects of the educational program that are being modified, studied, or tested are many, affecting all levels and all elements of curriculum.

Pre-school and early childhood programs. Assuming that kindergartners' learning suffers from early impoverishment in verbal and cognitive experiences, pre-school programs for 3- and 4-year olds are being tested. Richer than the usual nursery school activity, the curriculum aims to develop cognitive and sensory motor skills, auditory and visual perception and discrimination, motor coordination, observation skills, and ability to understand and follow directions. The coordination of verbal experiences (342) and enrichment activities seeks to raise the motivation for school achievement and to enhance the learning-how-to-learn skills. In some instances, an accompanying program for mothers promotes home management and child care, as well as understanding of the educational enterprise.

Content modifications. Because the school program has such high verbal content—indeed, the child's success depends on his mastery of fundamental communication and linguistic skills—the development of reading competence and related language skills is of prime concern. A variety of techniques for teaching pupils to read are employed, including experimentation with methods, materials, groupings, and special personnel. Reading improvement teachers are used in some school systems to apply early diagnosis and corrective services. For those youngsters for whom English is a second language, special materials and techniques are being developed.

New emphasis in the elementary school is also found in such projects as Wilmington's project for schools in changing neighborhoods which stresses deepening insights and skills in human relations as a supplement to academic skills. Specific methods appropriate to the program's objectives include role playing, open-ended stories, use of film and other aids for human understanding, utilizing community resources for curriculum trips.

Special modifications have been made for potential school leavers. Among these, work-study programs, in which youth are placed and supervised in part-time jobs,

are widely used. The employment experiences are then dovetailed with work-oriented English, social studies, mathematics, and guidance experiences. The work-study approach is seen by some school systems as "an alternative pathway to adulthood" beginning with youth ages 13 and 14.

The perimeters of a program which would capitalize on the educational resources of the city, without curtailing opportunities or drive for achievement are still unclear. There are healthy elements, for example, in social studies programs which focus on urban life, which use the cultural resources of the city, and which contribute to enhancing self-image through understanding the contributions of various ethnic and racial groups to American life and culture. New York City offers family living education, as so many youngsters lack security of a sound family life and its precedents in facing their adult responsibilities. Other approaches to using the city as an educational resource include discovery of the community's social service needs and volunteer service to others.

Probably in no area of curriculum is a question so often begged as are these: What knowledge, skills, and attitudes should be acquired by youngsters (343) in depressed areas? How do these differ from the general objectives of public school programs? How can sequence, continuity, and articulation be structured for a highly mobile population? Programs in the category of so-called "basic" or "general" mathematics or "consumer" English are being increasingly questioned. However, for certain students, what alternatives are better? Not all students can or should be studying nuclear physics or fourth-year Latin, but the fact that he lives in a depressed area should not cause him to be guided automatically into vocational preparation for semi-skilled or unskilled work. As one participant put it, in developing curriculum for depressed area children, we tend to underestimate their intellectual potential and to overestimate their experiential background. Programs which open up intellectual opportunities, which are meaningful, and which are seen as contributing to both

immediate and long range development must be developed for children in depressed areas.

Curriculum enrichment. Perhaps the most widely known enrichment program is the Higher Horizons Program of New York City, now being adapted in numerous other communities. The program encourages those identified as the most able students in schools in low socioeconomic, culturally deprived neighborhoods, to develop their potential more fully and to climb to higher educational and vocational levels. Among its several aspects are remedial and enrichment services in reading, mathematics, and a foreign language; clinical services (psychological, psychiatric, and social work); a cultural enrichment program (concerts, plays, films, athletic events, field trips to colleges, hospitals, industrial plants); parent education meetings and interviews; a public information program for the community at large. Evaluation of Higher Horizons and its variations suggests positive results in such areas as reading achievement, school grades, pupil morale, improved staff morale and enhanced motivation. However, the studies raise prickly questions as well as providing answers. The need for isolating those aspects and factors which influence the program—aside from the charismatic qualities of the principal—has been noted. Whether improved instruction outweighs enhanced motivation or whether both are indispensable is unknown. Whether the enriched experiences are effective with a particular kind of child only is not known. Which facet of the program contributes which net gain is still not clear. As one conferee commented, to raise these questions is not to deprecate the Higher Horizons Program but rather to determine whether "a well-planned program of social and cultural experiences plus an improved educational program can significantly upgrade the educational achievement and aspirations of a substantial number of youngsters from deprived areas (344) or just a small core." To date, the emphasis has tended to be on those youngsters who are identified as the most promising and able.

Improved instructional materials. A great deal has been said about the need for creating instructional materials for both pupils and teachers which strike a spark in the learner from a narrow, cultural background. The major objections to much of the existing material for reading instruction, for example, are its so-called middle-class bias and its over-all blandness. Instructional materials need to be interesting, exciting, and tempting for children from depressed areas. What kinds of materials, as one participant put it, will get these children mentally out of the squalor and poverty, the imprisonment of their home environment and brighten their self-images? Out of their urban setting, some teachers have produced materials which reflect easily-recognized experiences of the children in their charge. Now available is a set of materials which weaves every-day living into reading-improvement worksheets: how to make sound purchases, how to find one's way around the neighborhood, how to locate and use community services and resources, and how to apply for a job are some of the topic treated. Functional content which deals with personal care, vocational orientation, and similar concerns seems promising. The possibilities of programmed instructional material—such as its aptness for individualized instruction, its manipulative qualities, its self-pacing—are being explored both for direct teaching-learning as well as for remedial purposes. The uses of various kinds of audio-visual and manipulative materials are being expanded.

School organization and classroom modifications. Techniques of developing divergent thinking abilities of inarticulate youngsters indicate another trend in instructional emphasis. The emphasis is on encouragement of children to think outside the conventional verbal channels and to use intuitive thinking, curiosity, exploration, and guessing rather than memorized rote verbal responses.

Some schools are experimenting with team teaching arrangements of various kinds as well as block time arrangements. Ungraded primary units are being tested as to their effects on disadvantaged children. Pittsburgh's

Team Teaching Project is designed to cope with the problems of "excessive mobility of population served, a high rate of teacher turnover, and the depressing cultural and socio-economic conditions in some of the areas from which their pupils come." By using different-sized teaching teams to work with classes and groups of various sizes, by drawing on personnel resources from the community, educational experiences are being extended and brought to life. Some instruction takes place in groups of 70 to 120 pupils; elsewhere, small groups of five to fifteen concentrate (345) on subjects in which they require special help or have unusual ability. Varying in purpose and emphasis, four kinds of teaching teams have been organized for the primary, intermediate, special subject and junior high school areas. A mental health team enrolls a psychiatrist, two psychiatric social workers, two school social workers (home and school visitors), a clinical psychologist and a research consultant. This team has been organized for the early identification and referral for therapy of children with emotional and social handicaps which inhibit their learning. Finally, social agencies, educational and religious institutions, civic and welfare organizations, and governmental units help provide personnel, facilities and funds which complement and undergird the educational effort.

The ungraded primary unit and its offshoots gear their pace to individual ability, in an effort to insure continuous progress for a child or at least to reduce the trend of failure for the youngster who moves haltingly. The unit generally treats the first through third grades as a block with grade lines eliminated so that the youngster may spend as few as two or as many as four years in the primary grades, progressing as he is able to, without being retarded.

Diagnostic and remedial programs. Like the Pittsburgh Mental Health Team, programs are being initiated in other cities to diagnose learning difficulties as early as possible in order to help prevent handicaps or disabilities. New York City's Early Identification and Prevention Pro-

gram, for instance, typifies efforts to identify, as early as possible, children with problems of emotional or social adjustment. Here again, a functioning team aims to clarify the scope and nature of the child's problems and to foster the kind of mental health, educational climate, counseling and treatment services that will reduce potential incidents. Prime attention is for children with reading problems; diagnostic procedures refer such youngsters to various clinics and agencies. Lack of adequate facilities in school and community, which aggravate the urgent need for more remedial services in all curriculum areas, is a need recognized by educators in most cities. Most pressing, perhaps, are the reading and special programs, such as additional classes for disturbed youngsters who can only remain in school if special assistance and instructional arrangements are made.

Reading clinics are available in many cities for youngsters who are too retarded to be helped either by the classroom teacher or by supplementary reading personnel. Staffs usually include selected teachers functioning as reading counselors, plus a clinical team consisting of psychologist, social worker, and psychiatrist. In New York City, to be referred to (346) such clinics, children must be of normal intelligence although severely retarded in reading.

Additional staff. Extra personnel are being assigned to schools to help children, classroom teachers, school administrators, and parents; to increase remedial and diagnosis activities as well as referrals; and to work with home and community agencies. Some of the special personnel found in the schools of New York City, for instance, include these:

Reading improvement teacher—relieves the classroom teacher for reading instruction, assists new and probationary teachers with reading instruction methods and materials, assumes responsibility for classes in schools where teachers have had to forego full lunch periods.

Other teaching personnel—provides remedial reading help in schools with large groups of non-English-speaking

pupils, teaches English as a second language to small groups of children in part- or full-time classes.

Non-English-speaking coordinator — helps other teachers improve the learning techniques and general adjustment of non-English-speaking pupils.

Substitute auxiliary teacher—links the school with the home, particularly of non-English-speaking pupils.

Junior guidance teacher—instructs children with normal intelligence who reveal patterns of serious social or emotional adjustment; works with psychologist and guidance specialist to determine whether the child can be helped or needs to be institutionalized.

Teacher of children with retarded mental development (CRMD)—works with small units of mentally retarded children in a self-contained classroom.

Teacher-trainer—works with newly appointed or probationary teachers on a helping-teacher basis.

Detroit has added coaching teachers to support the work of the regular teachers by their extensive diagnostic, remedial and developmental work in the language arts and arithmetic; full-time visiting teachers (school social workers) to diagnose and refer pupils and their parents for aid from appropriate agencies and specialists; school-community agents to provide liaison between the school and its community, parents, other adults and agencies. Other cities have increased available personnel for specific services for children in depressed areas, services which are usually of compensatory or remedial nature.

Extension of school day. Schools in depressed areas have long served as neighborhood reacreation and leisure-time centers. Some school systems are going beyond the usual after-school recreation programs and are providing (347) places for individual and group study, reading and science centers, cultural enrichment centers. The after-school program is viewed as more than a day-care or custodial activities and, instead, presents schools with enrichment centers for children and youth, as well as adults. The community-school concept—using the school plant for co-

ordinated community services with programming from early morning to late evening, 7 days a week, 12 months a year—is extending into depressed areas more and more.

In New York City, the Mobilization for Youth Homework-Helper Projects employs high school youth from low-income families as tutors for elementary school youngsters with academic problems. The tutor is paid on an hourly basis, which yields a small income for after-school work. Selected grade-school pupils attend after-school tutoring sessions on a one-to-one basis. The high school students are trained for the work and are supervised by adult teachers. The high school tutors are not expected to provide remedial help but they do contribute the extra reassurance, support, and immediate impetus for helping elementary scholars with their studies, especially in the language arts area. The program has the dual virtues of recognizing and rewarding concretely high school students who are achieving and of helping culturally disadvantaged children with their school work.

After-school programs will continue to feature recreational and informal pursuits, civic meetings and performances of various kinds, but the expansion of these into culturally enriching activities will enable some youngsters to escape from the slum society into the centers for support, entertainment, instruction, and social intercourse.

Extension of school year. Several kinds of programs are lengthening the school year. One is a schedule change using a 12-month program with all of the implied modifications in staffing, programming, and facility use. Widespread is the practice of school's operating summer programs and camps. The summer school may be an extension of the normal academic program to enable youngsters either to make up for past deficiencies or to enjoy advanced work or other forms of enrichment. Normally, students at the elementary school level are invited to attend without credit, marking, or formal examination but rather to experience educational growth. The primary objective of summer-school programs in the depressed

areas is more usually that of enrichment and remediation. The atmosphere can be less formal, particularly if advantage is taken of day-camp possibilities for school activities. Here, the program can be enriched within and outside of the building, drawing heavily on the camping approach. Some school systems are operating summer residence camps (348) for youngsters from depressed areas as a means of getting them away from the city and from disadvantaged neighborhoods. A low-cost camping program and outdoor recreational experiences are combined with academic and educational opportunities in such arrangements.

Extended guidance and student personnel services. Increased guidance and counseling services are found mushrooming in many depressed area schools. Team approaches to working directly with youngsters on a counseling or therapy basis are involving guidance specialists, social workers, psychologists, and classroom teachers. Often, services are being extended to the family to help parents better understand the educational program and their own children's behavior and achievement. Guidance services have been scheduled for the evening hours and summer months to make them more readily available to depressed area families. Non-school people with competencies in particular vocational or professional areas are supplementing the more traditional guidance services. Student personnel services are one of the prime areas in which diagnostic and counseling services are being extended to reduce clinical needs of youngsters from depressed areas.

Work-study and continuation programs. Keeping youngsters in school so that they do not join the dropout statistics is no longer viewed as an adequate goal by most school systems. Instead, secondary schools are attempting to develop retention programs which are meaningful, which are perceived as contributing to the youth's personal and vocational goals. An illustration of the concentrated efforts in New York City to retain high school students is found in the Youth Achievement Program.

Boys with records of truancy, poor behavior, and academic failure are grouped together under the full-time guidance of an experienced, sympathetic teacher. Besides two regular-program classes, the boys attend a two-period class with their special teacher who uses curriculum materials designed for the group. In the afternoon, they work at part-time jobs for private employers with the special teacher responsible for job placement, job visitation, and contact with the home. Their curriculum materials emphasize job orientation and preparation for adult responsibilities.

Work-study programs, by giving equal importance to academic achievement and work skills, increasingly are viewed as the means for secondary schools to hold youngsters with meaningful, gainful experiences. Particularly important for alienated youth, this practice is catching on also for preventive programs. The Detroit Upgrading Program provides a short-term work experience for out-of-school unemployed youngsters, combined with in-school instruction. Other projects modify school programs to combine continuation of academic work with pre-employment instruction. Such programs equip youngsters with information about (349) work tasks and training standards and aims at stimulating the academic achievement prerequisite to job success. Courses include work-sampling, trips to plants and stores, and classroom visits by local employers. The field trips are designed to launch discussions about training demands, rewards, opportunities, and personal satisfactions. There is close scrutiny of the role of trade unions and various legal and quasi-legal organizations whose purpose it is to upgrade workers and eliminate discriminatory practices.

Work explorations, on-the-job training, subsidized work experiences are all being arranged along with programs to convince youth of the need for education. Efforts are being made to offer a climate conducive to more school for the drop-outs, at least on a part-time basis. The 16-to-21-year-old group is particularly critical; thus, the post-high school technical training and job retraining are both

seen as promising practices. Basic education for individuals with technical skills but threadbare educational qualifications represent another facet of school retention or continuation efforts.

Parent education programs. The need for interpreting to parents the school program and its stress on educational achievement and motivation has resulted in the transfer of some parent education programs from school to home and neighborhood. School systems have found parents of children in depressed areas indifferent and apathetic, rather than hostile to education. Frequently, such parents are uncomfortable in the presence of a teacher or a person who represents authority. Many would be glad to have their children achieve, but—having had little formal schooling themselves—they know little about the whole process or how they can assist. Some school systems are attempting to reach parents by informal, apartment-house-based programs rather than the formal, structured, parent-association approach. These programs seek to help parents directly and practically with their day-to-day problems and to avoid dealing with general discussions about child care.

New methods of instruction. Relatively little research has sought to pinpoint methods that reach culturally disadvantaged youth. Many kinds of reading instruction methods are being tested for their contribution to developmental and corrective needs of children in depressed area schools. However, little is known about what methods will contribute to a more trusting relationship between pupil and teacher, will provide for variety and motility, will modify the need for immediate gratification, will contribute to overcoming the specific learning disabilities of depressed area children. The particular teaching procedures that influence classroom climate have not been clearly seen as yet. Experience has shown that some teachers succeed better than others with pupils in disadvantaged (350) areas. It would be invaluable to know more about the constellation of forces which contribute to this differential success: how much is due to personality,

including the ability to be supportive and accepting, imaginative and creative; is "middle-class oriented" teaching necessarily a negative factor or can it effect growth positively; how does the teacher reach the hard-to-reach youngster? Study may yield some leads to methods, tempo or pacing of instruction, attention span, involvement, and emphasis on different sensory modes as they effect pupil attainment and drive.

Coordinated efforts among youth-serving agencies. The duplication of effort, overlapping of services, lack of coordination, and failure to share information continue to plague various social and welfare agencies in many a community—particularly in depressed areas. Several projects are using the school as the catalyst for coordinating efforts amongst the educational, social, municipal, and service agencies.

In-service teacher and staff training. Almost every educational upgrading program involves some kind of in-service training of teachers to equip them to meet the challenge of working in depressed areas. These training sessions may aim at wakening the teacher's sympathy and understanding of the cultural heritage, economic and social problems and individual life styles of pupils in depressed areas. Beyond that, in-service programs attempt to help the teacher directly with methodology, subject matter, instructional resources, methods, classroom management and the availability of special services in depressed areas. The potential rewards and personal and professional satisfactions which come from working with disadvantaged children are stressed.

In conclusion. The multi-dimensions of the problems of education in depressed areas and the various efforts to give meaning to the ideal of equality of opportunity demand unclouded perspective, a prophet's eye for planning, and a predilection for the larger context. The above listing of various efforts to improve education and life in depressed areas represent a sampling only and is neither comprehensive nor qualitatively selective. They simply illustrate the many ways to attack the complex and crucial

problem. Agreeing that more and better research and experimentation are needed, the social and behavioral scientists will certainly be increasing the production of studies and their complexity. Educationally, the gaps are awesome in our understanding of the factors whose total is cultural deprivation and its consequences. What are the effects of various social and psychological factors on the attitudes of different groups toward the schools and toward education? The importance of looking at the problem in terms of its educational, sociological, psychological, economic, political, health, welfare and housing dimensions is (351) increasingly clear. Knowing that the decision makers or the influentials must become involved, we do not know how to attract their commitments nor how to organize the unaffiliated in the depressed area so as to increase the indigenous leadership.

During the conference several expressions were repeated over and over again:

"We need more data . . ."

"We need to test . . ."

"How will this affect other programs if . . ."

"Where will the teachers come from to . . ."

"With limited resources, would it be more profitable to . . ."

"Where will the money come from for . . ."

Over and over, participants stuck on the question of whether the school alone can make the necessary impact without society's opening up really equal opportunities in employment, in housing, in civic affairs. The importance of full and equal employment opportunities cannot be overemphasized and is directly tied to educational attainment. We need to know much more about the nature, the consequences, the effects of the total societal milieu on educational opportunity. We need to know how each of the subfactors interacts with others to create the conditions for equal opportunity. We need to capitalize on the positive elements of life styles in the depressed areas, of ethnic and racial minority groups, of the city as an

educational center in order to move ahead purposefully and unitedly to overcome the disadvantages of millions of Americans.

The outlook is both discouraging and hopeful. It is discouraging in terms of its size, complexity, bitterness, and the human cost involved. The outlook is hopeful in the forces which are being mobilized to dissect and resolve this wasteful, destructive problem of displaced citizens in a rejecting or ignoring homeland. The ideal is clear, the directions well marked; now, the initial steps must be taken so that Americans all can move ahead toward the fullest realization of each individual's potential.

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THE NEIGHBORHOOD SCHOOL

by Archibald B. Shaw.*

Every custom and principle in our public schools needs to be looked at critically under today's pressures. Class size, school size, pupil-teacher ratios, grouping, grades—nothing is sacrosanct. Any kind of organization has faults and sets limits, by definition. We need a fresh view to see whether they are still valid, lest we confuse tradition with revealed truth and change with heresy.

One of the longest and stoutest-held traditions is that of the neighborhood school. Now it has come under attack, and deserves the most careful scrutiny.

The neighborhood school has two built-in characteristics—it limits children's contacts and it takes on much of the flavor of its neighborhood. These two factors can work for good or ill. A third characteristic, usual but not inevitable, is that which was exposed beyond dispute in Patricia Sexton's study of a big city's schools—the poorer the neighborhood the poorer the school. This doesn't have to be so.

Experience and good sense tell us that even the same dollar expenditure at each school won't equalize educational opportunity. More is needed. Just as we cheerfully accept the obligation to provide more and better lighting for people with handicapped vision, we need to provide more in school for those children who have less out-of-school educational stimulation.

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There are places where school attendance boundaries need sharp re-study. A few schools can be unsegregated by boundary shifts. In a few districts it is possible to re-group the grades so that two schools may share a double-neighborhood, one for grades 1-3, one for 4-6. Ingenious and inspired remedies may be possible. But for most school systems there is no real choice. The elementary schools must be neighborhood schools or become mechanical sorters of kids and purveyors of a kind of robot education.

It is not only distasteful and un-American to try to compartmentalize kids according to some pre-established religious, color and culture mix. It is futile. People who are now more mobile than ever before just won't stay put. The result too often has been a rapid re-segregation, and a general lowering of educational opportunity for all.

To one view, the scrambling of kids by some impossible formula destroys the potential of the neighborhood school for every neighborhood and doesn't yield genuine gain for anyone. To such a view, neighborhoods and their sociology are all that stand between us and a mass, de-humanized, overpowering society.

It's not enough to be on record for the neighborhood school. City officials, school boards, and school people must accept the accompanying challenge to make that school a genuine service center and a haven of real educational opportunity for the neighborhood, tailored in its resources to fit the task.

The fundamental complaint in the slum schools is not against segregation but against inadequate, inappropriate, and ineffective education. Superintendents aren't to blame, nor are school boards. The situation has grown on us all, as a part of the decay of downtown. Strangely very few urban planners, renewal experts, or other apostles of the new city have recognized the potential of a truly neighborhood-serving school for the lifting of the quality of living in a decaying area.

In fact a great deal of public housing has contributed to the anonymity and extinction of the neighborhood as

a social organism. Much of it has posed impossible conditions on a city school system which might, had it been given a chance, have been able to soften the brutal impact of the housing units and at least have been ready with adequate schools as they were needed. But schools have not had that chance. Neither has their over-all access to the city and area tax resources kept pace with the problem.

The problem is with us, in cities large and small; all over the nation. Destroying the neighborhood-serving school is not the answer. What is needed is the will and wisdom, to mount a concerted attack on the deficiencies of the neighborhoods and to make drastic improvements in the appropriateness and effectiveness of their schools. This takes a lot of doing. Most of all it takes a realistic level of financial support comparable to that provided now only in the wealthiest, most school-conscious suburbs. It's not just a city problem. The amount of money now available to try to do some of these things is a national disgrace.

OPINION POLL, October 1963.

Editorial from Nation's Schools,
Robert M. Cunningham, Jr., Editor.

KEEP NEIGHBORHOOD SCHOOL, 84 PER CENT OF SCHOOLMEN PLEAD

Nine-tenths of this month's replies heartily disapprove student transfer to correct de facto segregation; even in the face of court rulings, most administrators favor neighborhood school

Nine out of ten schoolmen across the country think that de facto school segregation in Negro neighborhoods does not warrant transfer of students to schools outside their neighborhoods. This opinion was recorded in October's poll of administrators. And almost as many administrators (84 per cent) would adhere solidly to a neighborhood school concept as a policy.

A Pennsylvanian expressed himself this way: "I do not believe public schools should be made the 'whipping boys' for desegregation." Another voice of the majority found fault with what he considers imposing of political will: "I believe strongly in equal opportunity in education for all ethnic groups. I feel, however, that integration, as imposed, is political rather than educational." (N.Y.)

Ranking high on the list of reasons for not condoning student transfer where de facto school segregation exists was the money shortage problem faced by most districts. Many administrators consider the cost of transporting students economically out of line. In the words of a Wisconsin administrator: "Transportation costs are high enough now and funds should not be diverted from instructional services." A New Yorker said: "This whole thing is ridiculous! In some cities we can't get enough money to buy books for children. Yet it is proposed—even ordered—that the district transport children from one section of the city to another." Another schoolman from Wisconsin offered this suggestion: "If the schools that Negro children attend are in as poor shape as Negro leaders contend, the

money spent transporting the students might better be spent improving their present schools."

Among those who thought it was a good policy to transfer Negro students out of neighborhood schools (9 per cent answered Yes) was an Oklahoma superintendent: "Transfers would vary with the individual school. Some schools will have children who desire a type of training not offered in their neighborhood, and they should be transferred."

Regardless of recent court decisions that minimize the importance of the neighborhood school, most administrators hold the opposite view. Reasoning behind this opinion was summed up by an administrator in Alaska: "Schools should be neighborhood centers for children and adults. If attendance areas are scattered this will also tend to break up the neighborhood spirit."

Speaking from his personal experience as an administrator in integrated schools, a superintendent from Oklahoma said: "I am for segregation regardless of the cost of extra buildings and transportation. I have had one integrated school and will not take another."

HOW ADMINISTRATORS VOTED

1. When housing patterns produce de facto school segregation in Negro neighborhoods, do you believe the district should transfer students to schools outside their neighborhoods?

Yes 9% **No 91%**

2. In view of recent court decisions minimizing the importance of the neighborhood school, do you favor adherence to a policy that requires children to attend schools nearest their homes?

Yes 84% **No 16%**

Based on a 4 per cent proportional sampling of 16,000 school administrators in continental United States, this survey brought a 35 per cent response.

Extract from "ASSIMILATION IN AMERICAN LIFE: THE ROLE OF RACE, RELIGION AND NATIONAL ORIGIN"

by Milton Myron Gordon.*

(233)

8. Assessment and Implications for Intergroup Relations

We are now ready to assess the meaning of the foregoing analysis for the field of intergroup relations. As noted on the opening page of this volume, we are concerned ultimately with problems of prejudice and discrimination; however, our study has focused directly not on individual psychological states and activities related to ethnically prejudiced behavior, but rather on the nature and structure of group life itself in the United States. We have pursued this line of analysis not out of a conviction that individual psychological states are unimportant in explaining the phenomena under consideration but rather because of a firm belief that group life and social structure constitute the matrix in which cumulative psychological states are embedded, that the latter cannot be thoroughly understood without reference to the former, and that social structure and group life have been relatively neglected as dynamic factors in etiological analysis of racial and cultural prejudice.

To put the matter in another way, one may consider racial and cultural prejudice in America in two different contexts. One is to think of 190 million American individuals, some of whom happen to be v ite Protestant, some white Catholic, some Jewish, some (234) Negro, etc. We then ask why some of these individuals are ethnically prejudiced and others not, or only partly so, and then concentrate on studying the personality syndromes (and their

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etiological roots) of the various types along the prejudice continuum. Much valuable research has been carried out along these lines. Our inquiry has been substantially different, although the two approaches can be considered complementary rather than competing or mutually exclusive. We have chosen to focus on the nature of group life itself in the United States as constituting the social setting in which relationships among persons of differing race, religion, and national origin take place. For these 190 million Americans are not just individuals with psychological characteristics. They belong to groups: primary groups and secondary groups, family groups, social cliques, associations or formal organizations, networks of associations, racial, religious, and national origins groups, and social classes. And the nature of these groups and their interrelationships has a profound impact upon the way in which people of different ethnic backgrounds regard and relate to one another.

In particular, we have called attention to the nature of the ethnic group itself as a large subsociety, criss-crossed by social class, and containing its own primary groups of families, cliques, and associations—its own network of organizations and institutions—in other words, as a highly structured community within the boundaries of which an individual may, if he wishes, carry out most of his more meaningful life activities from the cradle to the grave. We have pointed to the considerable body of evidence which suggests that the various ethnic varieties of Americans, excepting the intellectuals, tend to remain within their own ethnic group and social class for most of their intimate, primary group relationships, interacting with other ethnic and class varieties of Americans largely in impersonal secondary group relationships. The United States, we have argued, is a multiple melting pot in which acculturation for all groups beyond the first generation of immigrants, without eliminating (235) all value conflict, has been massive and decisive, but in which structural separation on the basis of race and religion—structural pluralism, as we have called it—emerges as the dominant

sociological condition. The implications of this analytical description of American group life for intergroup relations will now occupy our attention. The following remarks will vary considerably in the generality of their theme and the specificity of their conclusions and recommendations. Furthermore, they will, from time to time, call into play certain ideological premises which will at such times be carefully identified. With these considerations in mind we are ready to proceed to a discussion of the implications of our analysis seriatim.

Structural Separation, Functional Consequences, and Prejudice: Recent studies have pointed to the role of intimate equal-status contact between members of majority and minority groups in reducing prejudice.[1] Structural separation, by definition, denotes a situation in which primary group contacts between members of various ethnic groups are held to a minimum, even though secondary contacts on the job, on the civic scene, and in other areas of impersonal contact may abound. In view of the tendency of human beings to categorize in their psychic perceptions and reactions and to form in-groups and, frequently, out-groups on the basis of familiar (236) experiences and contacts,[2] it may be plausibly argued that just as intimate primary group relations tend to reduce prejudice, a lack of such contacts tends to promote ethni-

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[1] Samuel A. Stouffer, Edward A. Suchman, Leland C. DeVinney, Shirley A. Star, and Robin M. Williams, Jr., *The American Soldier: Adjustment During Army Life*, Princeton, N. J., Princeton University Press, 1949, pp. 586-95; Morton Deutsch and Mary Evans Collins, *Interracial Housing*, Minneapolis, Minn., University of Minnesota Press, 1951; John Harding (ed.), "Intergroup Contact and Racial Attitudes," *Journal of Social Issues*, Vol. VIII, No. 1, 1952; Gordon W. Allport, *The Nature of Prejudice*, Cambridge, Mass., Addison-Wesley Publishing Co., 1954, pp. 261-82; Daniel M. Milner, Rosabelle Price Walkley, and Stuart W. Cook, *Human Relations in Interracial Housing: A Study of the Contact Hypothesis*, Minneapolis, Minn., University of Minnesota Press, 1955; George E. Simpson and J. Milton Yinger, *Racial and Cultural Minorities*, New York, Harper and Brothers, Rev. Ed., 1958, pp. 751-7.

[2] Gordon W. Allport, op. cit., pp. 17-67.

cally hostile attitudes. It should be carefully noted that we are not thereby concluding that prejudice and discrimination cannot be reduced under conditions of structural pluralism; nor, indeed, that structural pluralism is necessarily undesirable from a philosophical point of view. Obviously, even from a sociological viewpoint, the matter is one of degree and should be discussed in that context.

On the one hand, structural separation of ethnic groups, brought about in part by the prejudices of the majority and in part by the desire of most such groups to maintain their own communal identity and subculture, can proceed to a point which is dysfunctional both for the creation of desirable attitudes and relations between the groups and for the workable operation of the society itself. The operation of modern urbanized industrial society is predicated upon the assurance of the easy interchangeability and mobility of individuals according to occupational specialization and needs. The fulfillment of occupational roles, the assignment of living space, the selection of political leaders, and the effective functioning of the educational process, among others, demand that universalistic criteria of competence and training, rather than considerations based on racial, religious, or nationality background, be utilized. The subversion of this principle by ethnic considerations would appear bound to produce, in the long run, confusion, conflict, and mediocrity. American society has not moved as far in this direction of "compartmentalization" or "columnization" as have certain other countries such as Holland and Lebanon,[3] but

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[3] Gerhard Lenski, *The Religious Factor*, op. cit., pp. 326-30; and David O. Moberg, "Social Differentiation in the Netherlands," *Social Forces*, Vol. 39, No. 4 (May 1961), pp. 333-7. On the question of dysfunctional consequences of excessive pluralism in the Netherlands, see Moberg, pp. 334-7. The following quotation is instructive: "Community solidarity and efficiency [in the Netherlands] are diminished. Not only is group set against group in political affairs, but even when there are community-wide activities with cooperative planning there must nearly always be representation from all major confessional groupings of the com-

(Continued on following page)

a trend toward this (237) type of structural organization in America may well be in the making. As Lenski has cautioned, after surveying the data from his study of socio-religious groups in Detroit:

> Currently we seem merely to be drifting into a type of social arrangement which Americans of all faiths might well reject if they became fully aware of all it entails.
>
> This problem should be of special concern to religious leaders. Our current drift toward a "compartmentalized society" could easily produce a situation where individuals developed a heightened sense of religious group loyalty combined with a minimal sense of responsibility for those outside their own group. In a more compartmentalized society there is good reason to fear a weakening of the ethical and spiritual elements in religion and a heightening of the ever dangerous political elements. Such a development would be a serious departure from the basic ideals of all of the major faiths in America, sharing as they do in the Biblical tradition. Hence, on both religious and political grounds, Americans might do well to study more critically than they yet have the arguments advanced by advocates of pluralistic society.[4]

With regard to prejudice itself, it would seem reasonable to conclude that excessive compartmentalization or structural separation, since it prevents the formation of

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(Continued from preceding page)

munity. As a result, incompetence is often evident; considerations of religious politics are placed above competence in the appointment or selection of personnel for community organizations and committees. Even when federated activity cuts across the religious columns, actual association of persons with different religious views takes place only among the small proportion of the population which holds positions of leadership. 'Water-tight' partitions separate the rank-and-file members." (Moberg, op. cit., p. 336).

[4] Lenski, op. cit., pp. 329-30.

those bonds of intimacy and friendship which bind human beings together in the most meaningful moments of life and serve as a guard-wall against the formation of disruptive stereotypes, sets up the conditions under which ethnic prejudice will grow and flourish. It is possible that even a (238) modest degree of structural separation will tend always to have as a sociological concomitant a low, endemic degree of prejudice among the various ethnic groups (varying considerably, of course, for individuals). This is by no means a counsel of despair and is in no way meant to discourage the attempts to combat prejudice and discrimination by those standard means currently being used by various agencies, private and public. At the very least, however, it suggests that one may not be able to eat *all* of one's cake and have it too, and it puts high on the agenda the carrying out of research focused on the causal relationship between degrees and types of structural separation and the holding of ethnically prejudiced attitudes. It makes mandatory, too, careful consideration by those ethnic agencies, institutions, and officials (of whatever religion, race, or nationality) of the desirability of program and policy measures calculated to produce a heightening of the level of structural separation now existing among the various ethnic groups in America. Furthermore it raises questions about the ultimate desirability of the acquiescence by manifestly community-wide civic agencies and programs (of which the Boy Scouts and Girl Scouts are salient examples) in organizational segregation at the local level according to religion, as a result of the stipulations of religious communal leaders and officials.

The characteristic disclaimer by denominational communal leaders that "We want our people to participate actively in *both* denominational organizations and activities *and* community-wide organizations and affairs" must be measured against the simple reality that people's time and energy are not infinite in extent and, in fact, are bounded by substantial limitations. If the ordinary citizen is continually exhorted by his ethnic leaders to participate

unreservedly in the ever-expanding array of ethnic-enclosed communal institutions springing up at all age levels, he will, in fact, have little or no resources of time and energy left to participate in those agencies and activities of the broader community that (239) through their broader perspective and membership bind the religious, racial, and nationality groups of America into a viable nation—a nation that for reasons of both sociological health and traditional political ideals must strive to be substantially more than an instrumental federation of mutually suspicious ethnic groups.

Structural and Cultural Pluralism: Legitimation and Relationship to Democratic Values: Although we have just finished warning of the dangers of an excessive degree of structural pluralism, our second point calls attention to the overwhelming reality of this form of social organization in America, to the extreme unlikelihood that its essential outlines will be changed in the foreseeable future, and to the need for demonstrating to the public consciousness that structural and cultural pluralism in moderate degree are not incompatible with American democratic ideals. The evidence we have examined indicates that, apart from the subsociety of the intellectuals, intimate primary group relations between members of different racial and religious groups in the United States remain at a minimal level. This structural separation provides for the preservation of the communal nature of the ethnic group, and, in the case of the major religious denominations, makes for the retention of a core of differentiated religious beliefs, values, and historical symbols important to the loyal members of the faith. To this extent, one is entitled to say that structural pluralism in America is accompanied by a moderate degree of cultural pluralism as well. There is certainly nothing in the democratic value-complex shared by most Americans and anchored in the country's historical traditions which dictates that these differentiated historico-religious values and their cultural concomitants should perforce be merged into one over-all

religious system, or that Catholics and Jews should abandon their religion and convert to Protestantism. Nor does the American democratic value-creed imply that the citizens of this land do not have the right to choose their intimate friends and (240) their organizational affiliations on the basis of whatever criteria of likeness and congeniality they find it convenient and desirable to utilize. To put it another way, subsocietal affiliation and participation in America, so far as the state is concerned, are voluntary matters (notwithstanding the fact that informal social pressures ascribe such affiliation on the basis of birth—that is, on the basis of the parents' affiliation), and the voluntary selection of structural and subsocietal affiliations, within fuctional limits, is well within the area of personal choice provided for by democratic values.

This position, of course, in no way justifies the use of racial or religious criteria in employment, housing, education, access to public facilities, or any other area in which functional benefits crucial to the fulfillment of human personality and the general welfare are concerned. In other words, it does not justify *discrimination*. But it does reserve the matter of choice in intimate primary group relationships for personal decision on whatever grounds the individual may elect to use. By the same token, it enjoins the state or any private citizen or group of citizens from interfering with those individuals who wish to form primary group relationships *across* racial or religious lines. There is no justification, for instance, in the value system of either political democracy or the Hebraic-Christian religious tradition for state or municipal laws forbidding social relationships between whites and Negroes (or other racial groups) up to and including the marriage relationship.

Finally, then, if a moderate degree of structural and cultural pluralism are legitimated by the American Creed, legitimation should be made salient in the public consciousness. For to legitimate and explain the system as it actually operates is to justify it and help to draw away the

animus that many Americans have toward minority groups which, in their minds, do not "assimilate" or "melt"—in other words, do not merge into the white Protestant population, give up their communal identity, and relinquish their cultural differences in crucial areas of belief and practice. As we (241) have indicated, for those who do not wish to "merge" to this extent, ample justification in the American value system exists. The legitimation of pluralism and the projection into the public consciousness of its justification and its reality on the American scene would also help to dispel the erroneous conclusion that it is only this group or that group that desires to maintain communal separation. In this respect, the Jews have frequently been singled out as a "separatist" minority; "clannish" is the adjective often applied. As our study has shown, although they do not succeed with the intellectuals, all of the major religious faiths—Jews, Catholics, and Protestants—operate functionally so as to perpetuate ethnic communality in the general population. The Protestants are least aware of the process since their majority status and historical precedence in America tend to make them unaware of the Protestant assumptions and criteria operative in many of the institutions which are labeled as "American" and "community-wide." Being the majority group, numerically, also tends to lessen objectively the possibility of the erosion of Protestant ethnic communality and cultural values through the process of intermarriage and other types of interethnic primary relationships. Thus Protestants have less to lose in encouraging ethnic mixture.

Our point, in sum, is not that interethnic primary group contacts are undesirable. Quite the contrary. It is rather that since many, perhaps most, members of the major faiths (and, among racial groups, notably the American Indians) basically desire some form of ethnic communality and subcultural preservation, both the reality of the system and its justification in the American value creed should be clearly brought home to the American population as a whole.

Pluralism and Assimilation: Guidelines for Agencies Concerned with Orienting the Immigrant to American Life: The analysis which we have made of the assimilation process, the factoring out (242) of the various subtypes of assimilation, and the discussion of the interaction of these subtypes, theoretically and empirically on the American scene, suggest a number of guidelines for those agencies and institutions concerned with the adjustment of immigrants and their descendants to American life and culture. These may be listed as follows:

1) Structural assimilation of immigrants to the United States (that is, the first generation arriving as adults), who enter the country in numbers substantial enough to make feasible a communal life of their own, is both impossible of attainment in most cases and undesirable as a goal toward which pressure on the immigrant might conceivably be exercised. While exceptional individuals will occasionally assimilate structurally into a native American subsociety—in many cases, the community of intellectuals—the great majority of newcomers to the country will need and prefer the security of a communal life made up of their fellow-immigrants from the homeland. This generalization is particularly applicable to immigrants of peasant, working-class, and lower-middle-class backgrounds, whose perspectives and orientations, on a statistical basis, will be inevitably narrow; however, it encompasses the great majority of immigrants of higher class origins, as well, who, in any case, are less likely to arrive in large numbers. Thus, efforts, however well-intentioned, to force structural assimilation on the immigrant are likely to be both futile and tension-producing. The newcomer needs the comfortable sociological and psychological milieu which the communality of his own group provides. Even those individuals who eventually will make major structural contact with native subsocieties can profitably use the communal base of their own group to make their initial adjustment and to fall back upon if their tentative interethnic primary group contacts prove unsatisfactory. Immigrant-adjustment

agencies, then, should not waste their time and energy in attempting to promote structural assimilation on a massive scale but should accept the functional (243) desirability of immigrant communal life with good grace. In this area, they might well limit their efforts to making significant opportunities for primary group contacts with native Americans available as alternatives on a thoroughly voluntary basis for that relatively small minority of immigrants who wish to and can meaningfully make use of such opportunities for broadening their communal life.

2) The major efforts of immigrant-adjustment agencies, then, should be directed toward acculturation, or cultural assimilation, and even here in modest degree and in selected areas. The basic goal should be the adjustment of the immigrant to American culture and institutions in those areas of secondary group and institutional contact which permit him to obtain and keep a job commensurate with his potential and training, to receive appropriate retraining and education where necessary, to perform adequately his role as a potential future citizen of both the nation and the local community, and to raise his children in ways which will neither do emotional violence to the traditions of the homeland nor subvert the family socialization process congenial to child-rearing in a basically middle-class American culture. This places the emphasis on the provision of instrumental skills: adequate use of the English language not at the expense of (nor denigration of) but in addition to the native tongue, occupational training, orientation to standard technological devices, knowledge of how to make use of the vast array of American educational opportunities, sophistication in citizenship adjustment, voting behavior, and participation in the political process generally. The functional goal would be the successful relationship of the immigrant, both culturally and structurally, to the secondary groups and instrumental institutional areas of American life. Changing the direction or nature of his intimate, primary group communal life would be excluded as a feasible or desirable product of directed effort.

3) The institutional and subcultural life of the immigrant community (244) should be regarded not only as a necessary concession to the sociological and psychological health of the new American but as providing a positive and effective means of enabling such a degree of acculturation as is posited as desirable and feasible in the paragraph above. The forms and devices of the immigrant community face two ways. On the one hand, providing the indispensable comfortable milieu, they continue the newcomer's orientation to the culture of the old country and the old locality, to its familiar ways of doing things, to its current history and its current gossip. On the other hand, they gradually incorporate elements of the American culture, interpret that culture to the newcomer in ways which he can understand, and sift its elements and bring them to his attention in a degree and at a pace which muffles and makes bearable the shock of cultural collision. The immigrant's burial and insurance societies, his indigenous church, his "foreign language" press, his favorite cafés and coffee houses, his old-style theatrical entertainments, his network of social cliques and "nationality" organizations, his ceremonies and folk dances, are never created or recreated simply as replicas of old country elements; they always progressively reflect the influence of American conditions and American events, serving as a sturdy bridge between the old and the new. In a word, the immigrant subsociety mediates between the native culture of the immigrant and the American culture. The recognition of this fact is the indispensable prerequisite for effective use of the communication channels and influence networks of the immigrant's communal life to aid and encourage the achievement of worth-while acculturation goals.

4) The American-born children of immigrants, the second generation, with exceptions based on the existence of a few rigidly enclosed enclaves, should be realistically viewed as a generation irreversibly on its way to virtually complete acculturation (although not necessarily structural assimilation) to native American cultural values at selected class levels. Exposed to the overwhelming accul-

turative (245) powers of the public school and the mass communications media, the immigrants' children will proffer their unhesitating allegiance to those aspects of the American cultural system which are visible to them in their particular portion of the socio-economic structure. The feasible and necessary task of the immigrant-adjustment agencies, in this area, is to aid in making this acculturative transition as smooth as possible, in view of the many potential difficulties, for both the children and their parents.

The tendency will be for native-born children to become alienated from their immigrant parents and the culture they represent, as they respond affirmatively to the higher status American cultural values. The challenge for social welfare agencies and institutions in the immigration field is, without mounting a doomed effort to stem the inevitable tide of American acculturation, to aid the second-generation child to gain a realistic degree of positive regard for the cultural values of his ethnic background, which will hardly retard the acculturation process, but which will give the child a healthier psychological base for his confrontation with American culture and for his sense of identification with and response to his parents. Such an effort should not preclude, of course, the encouragement of the development of effective English language skills, since this development is indispensable to adequate adjustment to American life. Nor do these counsels obviate the need to deal with the interconnected problems that the second-generation child traditionally faces as a member of a minority group, subject to some degree of prejudice and discrimination, and as a person being socialized in the lower and underprivileged sector of the socio-economic environment.

Desegration, Integration, and the Role of Government: Our sociological focus on the phenomenon of ethnic communality in the United States suggests certain important implications for the current controversies surrounding the attempts to eliminate racial (246) discrimination by law—a series of events launched into full motion by the Supreme Court school desegregation decision of 1954.

The basic theoretical distinction which it is necessary to make in the types of processes involved in these turbulent happenings has been well delineated by Kenneth Clark, who points to the differences between *desegregation* and *integration*.[5] Desegregation refers to the elimination of racial criteria in the operation of public or quasi-public facilities, services, and institutions, which the individual is entitled to as a functioning citizen of the local or national community, equal in legal status to all other citizens. It is the achievement in full of what is usually referred to as his "civil rights." Integration, however, embraces the idea of the removal of prejudice as well as civic discrimination and therefore refers to much more. In Clark's words, "Integration, as a subjective and individual process, involves attitudinal changes and the removal of fears, hatreds, suspicions, stereotypes, and superstitions. Integration involves problems of personal choice, personal readiness, and personal stability. Its achievement necessarily requires a longer period of time. It cannot come about 'overnight.' It requires education and deals poignantly with the problems of changing men's hearts and minds."[6] To which we would add that, in social structural terms, integration presupposes the elimination of hard and fast barriers in the primary group relations and communal life of the various ethnic groups of the nation. It involves easy and fluid mixture of people of diverse racial, religious, and nationality backgrounds in social cliques, families (i.e., intermarriage), private organizations, and intimate friendships. From this basic distinction between desegregation and integration, and the relation of this distinction to both sociological realities and the American democratic value system, a number of conclusions follow:

1) Desegregation—the process of eliminating racial discrimination (247) in the operation of public and quasi-

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[5] Kenneth B. Clark, "Desegregation: The Role of the Social Sciences," *Teachers College Record*, Vol. 62, No. 1 (October 1960), pp. 16-17.

[6] Ibid., p. 16.

public institutional facilities—will not lead *immediately* or, in the intermediate future, *necessarily* to integration in the sense of the dissolution of ethnic communality and the formation of large-scale primary group relationships across racial and religious lines. The tendency toward ethnic communality, as we have demonstrated, is a powerful force in American life and is supported, once the ethnic subsociety is formed, by the principles of psychological inertia, comfortable social immersion, and vested interests. Even if all southern public schools and other public facilities were to be immediately desegregated, there is no reason to suppose that the Negro and the white subcommunities would merge into one another or that the traditional barriers to intimate friendships and relationships between Negroes and white would at once come tumbling down. Certainly there is no basis for the belief that Negroes and whites, respectively encapsulated in their own subcommunity and subculture, would rush to marry each other. This sociological insight, it will be noted, is offered here in a spirit of scientific neutrality and not as a conclusion which is either good or bad from the point of view of some particular value system. I have already pointed out that, on the basis of traditional American democratic values, Negroes and whites should have the right to make close friendships and to marry across racial lines at their pleasure. But sociological realities do not indicate that these phenomena would be likely to take place in significant volume in the immediate future, even if all public and institutional discrimination were to be eliminated. If die-hard segregationists who now bitterly oppose the granting of full civic equality to Negroes could be made to understand this fact, it is possible that the debate over desegregation could be carried out in a less emotional and a more rational climate of discussion and action. It is necessary to repeat that this point is not a concession to any *right* of segregationists to bar interracial primary group relationships; it is a statement of sociological probabilities which, if correctly understood, might clear the way for more rapid and effective (248) action in such areas as public education, public transportation, public

recreation, jobs, housing, and the operation of ordinary institutional facilities which belong to all Americans on an equal basis.

2) The proper role of government in racial and ethnic matters, under the American democratic system, can be defined in three steps:

a) It is the responsibility of the government to effect desegregation—that is, to eliminate racial criteria—in the operation of all of its facilities and services at all levels, national, state, and local. The American democratic value system and the specific constitutional expression of these values in the Fifth Amendment and the three Civil War Amendments to the Federal Constitution, particularly the Fourteenth, with its clause enjoining the state from depriving any person of the "equal protection of the laws," provide the legal mandate for such a ban, and the execution of this mandate demands action (some of which, it should be noted, has already been taken) in the form of legislation, court orders, or executive orders, in such areas as jobs, housing, voting, education, service in the armed forces, and access to public facilities. Since the national government, through grants, loans, and purchasing, now has a hand in so many types of activities which were once exclusively private or, if public, purely within the scope of states and municipalities, the way is opened for entirely legitimate pressure to be exerted by the national government on recalcitrant or hesitant local governments, businesses, institutions, and individuals who still want to preserve the old segregated pattern but are reluctant to dispense with federal largesse. There will inevitably be some areas of activity where the question of whether there actually is governmental participation of sufficient scope to warrant a judgment that "state action" applies will be unclear;[7] these matters can only be decided (249) by

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[7] For a discussion of one interesting case where the definition of "state action" was crucial and controversial, see Milton M. Gordon, "The Girard College Case: Resolution and Social Significance," *Social Problems,* Vol. 7, No. 1 (Summer, 1959), pp. 15-27.

subsequent judicial decision. Nevertheless, the major goal of getting the government—the focal expression of the will and welfare of all the people of the country—out of the business of supporting racial discrimination, either directly or indirectly, remains both clear and irreproachable.

b) It is neither the responsibility nor the prerogative of the government to attempt to impose integration, as here defined—that is, to take official notice of personal attitudes and preferences (beyond the ordinary teaching process in the public schools where standard facts and interpretations underlie the curriculum), and to interfere in any way with those personal choices in primary group relationships and organizational affiliations which make either for ethnic communality or interethnic mixture, as the case may be. I except here specific incitations to violence and, of course, paramilitary operations which threaten law and order. In short, the ordinary processes of communality, whether intra-ethnic or interethnic are beyond the scope of governmental interference or concern.

c) It is neither the responsibility nor the prerogative of the government to use racial criteria positively in order to impose desegregation upon public facilities in an institutional area where such segregation is not a function of racial discrimination directly but results from discrimination operating in another institutional area, or from other causes. If institutional area A is *de facto* segregated not because of the direct use of racial criteria but because institutional area B is segregated and because there is a relationship between institutional areas A and B, then the place to fight discrimination is not A but B. The obvious case in point is the operation of the public school system. The attempt by well-meaning "race liberals" in a number of northern communities to desegregate public schools by overturning the principle of neighborhood (250) assignment—that is, to positively promote Negro-white intermixture by means of racial assignment across neighborhood lines—is, in my opinion, misguided. It is misguided because it does exactly what is in principle wrong, regardless of how laudable the goal. It puts the government in

the business of using race as a criterion for operating one of its facilities. This is precisely what the government should not be doing, either negatively or positively. The genius of the American political tradition, in its best sense, in relation to race is that it dictates that racial criteria are *not* legitimate in the operation of governmental facilities and should be rigorously eschewed. To bring racial criteria in by the front door, so to speak, even before throwing them out the back, represents, in my opinion, no real gain for the body politic and has potentially dangerous implications for the future. If racial criteria are legitimate criteria for government consideration (which I firmly argue they are not), then the way is left open for many ominous disputes as to the merits of any particular racial clause in governmental operations.

It should be understood that I am making no specific plea here for the particular merits of the principle of neighborhood assignment to public schools. This is a matter which the educationists can debate among themselves. Furthermore, where inferior facilities in a school in a predominantly Negro area exist, or Negroes or members of any ethnic group are not appointed to teaching positions on the basis of individual qualifications, then we are in the presence of legitimate cases of racial discrimination which call for effective remedy.[8] My basic point, however, is that if *de facto* segregation of public schools in many northern cities exists because of segregation in housing (which, of course, it does), the place to fight the battle of civil rights is housing, not the public **(251)** school system, and the way to fight it is to eliminate racial criteria from the routes of access to housing space, not to inject them into the operation of the educational system.

d) It is unwise and unjustifiable for the government to create programs labeled and reserved for the benefit of

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[8] Another qualification is necessary here. If school districts were gerrymandered originally for the sake of instituting all or predominantly Negro schools, then this initial act of discrimination should be fought and redress should be demanded.

any special racial group, or to set up racial quotas in any area of activity such as employment, as is currently demanded by some civil rights proponents. It is undeniable that the burden of unemployment bears most heavily at present on Negroes, as a result of the cumulation of past discriminatory events. However, there are white, Indian, and Oriental unemployed workers who need aid, also, and any government program designed to retrain or upgrade the job skills of occupationally disadvantaged Americans should include them as well. In other words, it should be set up as an all-inclusive "functional" rather than an exclusive racial program. It goes without saying that job hiring and promotion at all levels should be made on the basis of individual merit, not racial quotas, however "benignly" the latter may be motivated. Present wrongs do not solve the problems created by past injustices and only assure that the underlying social evil will further plague the future. We do not want "see-saw discrimination" in American life; we want the dismantling of the discriminatory apparatus.

In sum, the proper role of government is to deal equitably with all persons under its jurisdiction without taking into consideration their racial background for any purpose.

Desegregation, Integration, and Private Institutions: The distinction between the processes of desegregation and integration is not nearly so vital for assessing the role of private institutions and organizations in racial and ethnic matters. For one thing, in many types of private social institutions—for instance, fraternities and social clubs—desegregation automatically implies integration because of the kind of social relationship implicit in the operation of (252) the institution. In other private institutions of larger scope, as, for instance, the private university, college, or academy, desegregation may or may not lead to integration depending upon particular factors associated with the life of the institution such as size and the presence or absence of segregated or self-segregated subgroups.

Moreover, the arguments surrounding the choices of segregation, self-segregation, or desegregation are more varied, more complex, and more conflicting than in the case of government. However, several insights and guidelines to action are suggested by the direction and scope of our previous analysis:

1) Some types of private organizations are those for whose goals and operation ethnic background is functional and centrally relevant. Quite obviously, a Methodist mission society, a Catholic sodality, a Jewish Temple sisterhood, or a club instituted to insure social welfare benefits for Polish immigrants and their descendants cannot reasonably be expected to throw open its membership to persons of other faiths or nationalities, as the case may be. Here one can confidently assert that there is no discrimination but simply a functionally relevant definition of membership.

2) Private organizations and institutions which serve a more general purpose, while they may be, under some circumstances, technically free to restrict membership on an ethnic basis, must face a series of crucial queries. Do they receive any assistance from the public treasury either in the form of grants or exemption from the payment of taxes? Can they justify an exclusionary policy on the basis of major functional relevance to the goals of the organization? Do they claim to operate under the general principles of American democracy, Hebraic-Christian brotherhood, and fair play? Do they perform a quasi-public function such as providing general education? If, in many cases, the answers to these questions should suggest the inappropriateness of an exclusionary policy, then the way is certainly left open for efforts to institute a policy which is nondiscriminatory. If such efforts by concerned members make the (253) segregationists in the organization unhappy, it must be pointed out that initiating change in the policy of a voluntary organization at the will of a majority of its members is a thoroughly democratic procedure. Thus the ethnic practices of private organization can frequently be settled by the dy-

namics of policy-making in a democratic setting where traditional procedures are subject to current examination in a changing society.

The Built-in Tension Between the Goals of Ethnic Communality and Desegregation: Earlier in this chapter we stated that desegregation in public and quasi-public facilities was unlikely to lead to the rapid breakdown of barriers between the primary group communal life of the various ethnic groups in America, and that the fears in this area of the segregationists, however unworthy, were thus unfounded. Here we examine a point which may appear at first to repudiate the above conclusion, but which, in fact, does not, but only qualifies it.

Desegregation—or, put positively, the achievement in full of civil rights for all groups—creates situations on the job, in the neighborhood, in the school, and in the civic arena, which place persons of different ethnic background into secondary, frequently equal-status, contacts with each other. These secondary contacts will not necessarily lead to primary group relationships, such as clique friendships, common membership in small organizations, dating, and intermarriage, and in the immediate or intermediate future will probably not seriously disturb the basic outlines of ethnic communality which have been shown to exist in America. However, over a sufficiently extended period of time, these new secondary group relationships between people of diverse ethnic backgrounds will presumably lead to an increase in warm, personal friendships across ethnic lines, a broadening of cultural perspective, an appreciation of diverse values, and in some degree a rise in the rate of interethnic marriage. All of these last-named developments run counter to the sociological requirements, (254) whether realized or admitted, of ethnic closure and ethnic communality. Here, then, is another major area of social reality where the advocates of cultural pluralism (and, by implication, structural pluralism) cannot eat their cake and have it, too. There are built-in tensions between the simultaneously desired goals of

ethnic communality and full civic equality, and these tensions create for the cultural pluralists a poignant dilemma. The dilemma is particularly acute for the two large minority religious groups—the Jews and the Catholics—who do not wish to see their young people "lost" to the numerically and culturally dominant Protestant subsociety or to the community of intellectuals and yet who ardently support the fight to secure full civic equality for all persons in American society. The racial groups approach the problem somewhat differently: the Negroes, apart from the new crop of "black nationalists," have never been ideologically committed to racial communality, however much they have been forced to create it; however, those whites who desire the full complement of civil rights for all, but who are reluctant to support the idea of racial intermarriage, must wrestle with the possibility that the rate of racial intermarriage will eventually increase under conditions of full equality. The nationality groups which still hope for subcultural survival are fighting such a rear-guard and eventually futile action that the dilemma for them has less realistic overtones.

There is, I believe, no clear course of action which neatly resolves this dilemma to the complete satisfaction of all parties concerned. My point, in this section, has simply been to make the conflicting considerations apparent. It is a dilemma which is certainly close to the center of the social problems attendant upon the presence of groups of diverse cultural origins and background in a modern industrial society. I shall leave my own "solution" of it for the concluding remarks of my analysis.

The Intellectual Subsociety and Its Significance: The existence of an intellectual subsociety in America which draws upon appropriate (255) individuals from all ethnic groups for its membership and, to some degree, allows them an institutional setting for primary group relationships, has several discernible consequences—or, to put it otherwise, serves several functions, both positive and negative.

First, it serves as an institutional safety-valve for those individuals who, because of a wide-ranging interest in ideas, the arts, and people, find ethnic communality personally uncongenial. If these individuals intermarry across ethnic lines, they find the need for the intellectual subsociety sociologically pressing, since this subsociety is the only real "neutral ground" in American life and the only communal group which looks either with favor or unconcern at interethnic marriage. (This is, of course, a matter of degree; interracial marriages, especially Negro-white, are still problematic even for the intellectual subsociety.) Even those who do not intermarry find the interethnic or nonethnic social environment with its emphasis on ideas and common interests rather than on ethnic background a comfortable and necessary one. Perhaps one should say that ethnic background is not ignored in the intellectual subsociety, as witness the great interest in this milieu in ethnic folk dancing and folk singing; it is rather that ethnicity becomes an interesting but subsidiary issue rather than one which colors and dominates the rest of life. Were such a social environment and subsociety not available, individuals of the aforementioned interests and inclinations would be rebellious and unhappy as they chafed at the restrictive bonds of ethnic communality.

Second, the intellectual subsociety with its ethnic intermixture serves the rest of the nation as a symbol of the possibility of interethnic harmony and integration at the meaningful primary group level of communal living. It is true that the process of achieving such integration is still incomplete even among intellectuals; the Negro, most notably, is still only partly and imperfectly encompassed in the communal life of the intellectual group. Nevertheless, partial as ethnic integration may be within it, the intellectual subsociety still serves as the most salient example of the possibility of (256) a truly integrated society. As such, it provides a testing ground for the problems and processes inherent in the achievement of such a society and stands as a symbol of its potential development in larger scope.

A third functional consequence must be stated in negative terms, or perhaps it would be more accurate to say that a question must be raised the probable answer to which has negative implications. The question is this: What are the consequences for the several major ethnic subsocieties in America of the fact that many, perhaps a large majority, of the most intellectually inclined of their birthright members are siphoned off, as it were, into a subsociety of their own, retaining only a minimal concern, if any, for the communal life and issues of their parental group? Put more specifically, if intellectuals of Jewish, Catholic, and Protestant background become alienated from the subsocietal life and concerns of their respective groups, what functional consequences result for these ethnic groups and for the general quality of American life of which these groups make up the overwhelming part? Some intellectuals, to be sure, remain within their ethnic origins groups as clergymen, communal leaders, or ordinary laymen, but the general trend is as otherwise described. Does this outflow of intellectuals from the religio-ethnic groups of America, their subsequent estrangement from the life of these groups, and the resultant block in communication between the ethnic subsociety and the intellectual have dysfunctional consequences? Do the major decisions both in the society as a whole and within the ethnic subsociety come to be made with the intellectual excluded from the decision-making process? Is there a mediocrity and stereotypy in American popular culture and in the subcultural life of each major ethnic group which results from this withdrawal of the intellectuals into a social world of their own? Do the intellectuals themselves lose out in breadth and vision as a result of this estrangement? And is this estrangement or alienation inevitable—in the very nature of things, given the scope and nature of individual genetic differences—or is it subject to elimination or modification as (257) a result of measures not yet thought of or implemented? These are questions, the answers to which, in the absence of relevant research and exploration, are not entirely clear. Nevertheless, they point to a series of problematic areas in

American life resulting from the alienation of the intellectual from popular society and culture.

The Ethnic Subsociety and Its Internal Responsibilities: The ethnic subsociety can be counted on to marshal its institutional resources to carry out the fight against racial and religious discrimination and prejudice on the American scene. Various aspects of the strategy of this indispensable effort have been discussed in previous pages. We turn now to a related but ostensibly different question: What should be the attitude of the leaders and leading organizations of the ethnic subsociety toward the subsociety itself—to the constituency which it serves—with regard to its relationship to the larger community? This topic will be considered by reference to two subquestions.

The first deals with the appropriate attitude of the institutional leadership of the ethnic subsociety toward facts and occurrences which appear to reflect unfavorably on the ethnic group. While the illustrations used below deal with the Negro group, other ethnic groups, including the white Protestant majority, could well have been utilized.

Not long ago, a journal dedicated to the cause of advancing the position of the Negro within the framework of equal rights, raised the question of whether it should devote an entire issue to the topic of delinquency and crime among Negroes. There are those who will argue that the correct answer is No—that special consideration of the above-average rates of crime and delinquency among Negroes focuses undesirable attention on this phenomenon and plays into the hands of the racists who are only too quick to point with alarm and to attribute higher Negro delinquency rates to some innate racial predisposition or inferiority.

I disagree with such a strategy. In the first place, national attention (258) has already been called to the high rates of Negro crime in the slums of the large cities through articles in such periodicals as *Time* and *Life*, and metropolitan newspapers raise the issue whenever local outbreaks of Negro "muggings" and allied violence take

place. It is therefore impossible to keep the issue from public attention even if it were considered wise to do so. More realistic and desirable goals are 1) to make the public understand the sociological rather than "racial" causes of the higher Negro rate—that is, to comprehend its source in racial discrimination and the substandard conditions, both physical and cultural, in which the great mass of Negroes are forced to live as a result of discrimination and prejudice; 2) to advance research in discovering the causes of crime and delinquency generally; 3) to research in detail the particular sociological causes for the higher Negro rate; and 4) to eliminate racial discrimination. None of these goals is advanced by an ostrich-like policy of avoiding recognition of the higher Negro crime and delinquency rate and by misguided restriction of informed and responsible discussion of the issue.

In the larger sense, it may be said that truth and understanding are the necessary preludes to informed and constructive action in the field of interethnic group relations. Donald Young stated this principle effectively over a decade ago:

> It is good technique to keep members of both races accurately informed about interracial questions. There is no better way to answer false assertions, kill tension-breeding rumors, and build a solid foundation for democratic action. This principle is generally accepted, but it is commonly misused because of fear that if the truth is not entirely laudatory of the Negro it may lead to greater prejudice. Also, because Negroes are sensitive and quick to infer insults . . . , racial liberals are reluctant to risk giving offense. The twisting or omitting of facts, exaggeration and plain prevarication in defensive arguments about race and crime, industrial skill, educational and scientific achievement, military accomplishment, literary and artistic products, etc. are commonplace. But the unvarnished truth alone contradicts racial dogma, (259) checks rumors, and in precluding specious rebuttal is more effective than the most kindly white lie. Unless

> the established facts are adhered to rigidly, and both weaknesses and strengths honestly included in interracial educational campaigns, the main results are likely to be a lack of public confidence and a weak foundation for action programs.[9]

The principle applies with equal force, of course, to Jews, Catholics, white Protestants, or any other ethnic group.

The second subquestion may be phrased as follows: Does the ethnic subsociety have any special responsibility to guide the behavior of its members with respect to avoidance of those forms of action which are patently injurious to society? Certainly if we phrase this question in terms of the attitudes of institutions in the white subsocieties toward racists, the answer appears clear enough. We expect white Protestant and Catholic churches and Jewish synagogues, for instance, to urgently preach doctrines of racial brotherhood, to support desegregation both in the church itself and in the larger society, and to actively oppose prejudice and discrimination. And we take the position that civic organizations, generally, stemming from the white subsocieties, should take a similar stand. Suppose we ask the question, however, with respect to a minority subsociety, and suppose some form of anti-social behavior may be particularly salient within its ranks as a result of the forces generated by prejudice and discrimination. Here, let us again use as an example the Negro community and the high rate of delinquency found in the Negro lower class.

Does the "Negro community" have, in fact, a special responsibility and role to play in the prevention of delinquency among Negro youth? The argument against any special responsibility, of course, runs something like this: Rates of delinquency and crime are the product of general sociological and psychological forces which are within the control and responsibility of the total community (260) and not in any special way of the Negro community. Fur-

[9] Donald Young, "Techniques of Race Relations," *Proceedings of the American Philosophical Society*, Vol. 91, No. 2 (April 1947), pp. 157-8.

thermore, wherever higher rates of Negro delinquency are present, these higher rates are the result of prejudice and discrimination shown by whites and embedded in the institutions of the total community. Therefore any attribution of special responsibility to the Negro community is both morally unjustified and logically fallacious. There is much to be said for this argument, and, in a strict theoretical sense, I would agree that the Negro community should accept no attribution of responsibility for Negro delinquency which implies either a special ethical obligation to deal with it or an acceptance of the fallacious thesis that its sources are fundamentally indigenous to Negro communal life.

However, I would not be content to rest here. I would say that while the Negro community does not bear a special *responsibility* in the matter of Negro crime, it does, in terms of the sociological realities, have a special *opportunity* in practical terms to focus, voluntarily, a portion of its resources on the problem of reducing the Negro delinquency rate. The existence of specifically Negro organizations and institutions, the sense of identification with the Negro group on the part of Negro individuals, the *de facto* restriction of social participation to the Negro community —all these components of Negro communal and subcultural existence—are sociological realities. The sociological reality of the Negro subsociety thus provides special opportunities for Negro communal leaders acting through Negro communal institutions to play a special role in the reduction of rates of anti-social behavior by Negroes.

To particularize: Negro communal leaders may 1) be in a position to provide special insights into the dynamics of social processes within the Negro lower classes and Negro lower-class family life which contribute to the excessive delinquency rate; 2) be able to do more effective ameliorative field work in standard social work processes because of the greater rapport which is likely to exist between lower-class Negroes and Negro social workers, and to supplement (261) existing social work measures directed toward the Negro community which are currently

in short supply; and 3) be in a position to devise and carry through institutional counter-measures whose particular effectiveness would derive from their source within the Negro community. To ignore these opportunities, it seems to me again, is to adopt an ostrich-like policy with regard to the multiplicity of specific variables which combine to produce the higher Negro delinquency rate, and correspondingly to make possible the multiplicity of counter-measures which offer special opportunities for action by the Negro community itself. To put it succinctly, simply because the *ultimate causes* of the higher Negro delinquency rate stem from broader social forces in the general community does not signify that *some effective counter-measures* cannot be taken at existing levels of structure and process by the Negro community itself. Thus I would argue that while the Negro community does not have, in the strict philosophical sense, a special *responsibility* to concern itself with Negro delinquency, it does have, in realistic sociological terms, a special *opportunity* to devote some attention and resources to this phenomenon. In short, my point is that the ethnic subsociety, whatever its racial, religious, or nationality background, from a sociological point of view has special opportunities to deal with particular behavior problems which may be related to its social history and current situation, and these opportunities should not be bypassed, even though the more basic roots of the problem lie in the institutions and practices of the larger society.

Nothing I have said suggests, of course, in any way that the Negro community should curtail or diminish its increasingly insistent and effective efforts (aided by many white liberals) toward achieving the broader long-range goals of eliminating prejudice and discrimination from American life. In the last analysis, the attainment of equal opportunities in education, employment, housing, and access to public facilities, and the development of mutual respect for America's varied racial, religious, and national back- (262) grounds among all her citizens constitute the ultimate effective solution to problems of social disorgan-

ization which bear unequally on particular minority groups.

Pluralism, Democratic Values, and Long-Range Goals for America: Our final remarks deal with the implications of our analysis of ethnic communality and the assimilation process for long-range goals in American social life with regard to intergroup relations. Into this analysis we must interpolate, too, the significance of democratic values as we understand them.

The struggle to eliminate racial and religious prejudice and discrimination from American life—a struggle, the unequivocal rightness of which, sociologically and ideologically, this volume takes for granted—goes on against the underlying social reality of ethnic communality tenaciously maintaining itself in an industrial urbanized society. We have described the nature of this ethnic communality as, basically, structural pluralism accompanied by an ever-decreasing degree of cultural pluralism. The relationship of this kind of a society to the problems inherent in attempting to eliminate ethnic prejudice and discrimination have been discussed in the preceding pages. What, now, of the future? What are the viable goals for America with regard to ethnic communality, given the desire to eliminate or reduce prejudice and discrimination, the nature of sociological realities, and commitment to the American democratic value system?

The system of cultural pluralism (which ultimately depends on structural pluralism) has frequently been described as "cultural democracy," since it posits the right of ethnic groups in a democratic society to maintain their communal identity and their own subcultural values. We have already argued that since ethnic communality rests principally on personal choices in primary group relations and private organizational affiliations, it falls well within the scope of those areas of free choice guaranteed by democratic (263) values. Reversing the coin, however, we must also point out that democratic values prescribe free choice not only for groups but also for individuals. That

is, the individual, as he matures and reaches the age where rational decision is feasible, should be allowed to choose freely whether to remain within the boundaries of communality created by his birthright ethnic group, to branch out into multiple interethnic contacts, or even to change affiliation to that of another ethnic group should he wish to do so as a result of religious conversion, intermarriage, or simply private wish. If, to the contrary, the ethnic group places such heavy pressures on its birthright members to stay confined to ethnic communality that the individual who consciously wishes to "branch out" or "move away" feels intimidated or subject to major feelings of personal guilt and therefore remains ethnically enclosed, or moves but at considerable psychological cost, then we have, in effect, cultural democracy for groups but not for individuals. Realistically, it is probably impossible to have a socialization process for the child growing up in a particular ethnic group that does not involve some implicitly restrictive values; nevertheless, the magnitude and intensity of such restrictive norms must be kept within bounds if we are not to be left with a system which provides cultural democracy for groups but enforced ethnic enclosure for individuals.

Probably the vast majority of Americans, as revealed in their choices in primary group relations and organizational affiliations, desire ethnic communality, at least in essential outline. Their preferences are reinforced by the self-perpetuating pressures generated by the nature of subcommunity organizational life and by the demands and exhortations, grounded in ideological conviction, of their ethnic community leaders. As we have suggested, some individuals, as a result of their particular inclinations and perspectives, move out into an amorphously structured intellectual subcommunity which contains people of all ethnic backgrounds. All of these recurring processes are probably inevitable and basically irreversible. **(264)** Thus the prognosis for America for a long time to come is that its informal social structure will consist of a series of ethnic subcommunities criss-crossed by social class, within which

primary group relationships will tend to be confined, that secondary group relationships across ethnic group lines will take place in abundance as a result of the requirements of an urbanized industrial society, and that the intellectual subsociety will grow somewhat both in numbers and in institutional articulation as a result of the constant increase in the magnitude of higher education.[10]

The major problem, then, is to keep ethnic separation in communal life from being so pronounced in itself that it threatens ethnic harmony, good group relations, and the spirit of basic good will which a democratic pluralistic society requires, and to keep it from spilling over into the civic arena of secondary relations to impinge on housing, jobs, politics, education, and other areas of functional activity where universalistic criteria of judgment and assignment are necessary and where the operation of ethnic considerations can only be disruptive and even disastrous. The attainment of this objective calls for good sense and reasonableness on the part of the average American citizen, regardless of ethnic background, and in addition to these qualities, a high degree of civic statesmanship on the part of ethnic communal leaders who will be tempted at times, out of their own convictions and enthusiasms, to emphasize ethnic exclusion and the demands in time and resources from their particular constituents which are likely to make for exclusion and separation, regardless of intent.

In sum, the basic long-range goal for Americans, with regard to ethnic communality, is fluidity and moderation within the context (265) of equal civic rights for all, regardless of race, religion, or national background, and the option of democratic free choice for both groups and individuals. Ethnic communality will not disappear in the

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[10] I do not mean to indicate that all, or even most, college graduates become "intellectuals" or interacting members of the intellectual subsociety. By no means. However, the spread of higher education opens the doors of possible entrance into the intellectual subsociety to an increasing number of those who are intellectually or temperamentally suited for it.

foreseeable future and its legitimacy and rationale should be recognized and respected. By the same token, the bonds that bind human beings together across the lines of ethnicity and the pathways on which people of diverse ethnic origin meet and mingle should be cherished and strengthened. In the last analysis, what is gravely required is a society in which one may say with equal pride and without internal disquietude at the juxtaposition: "I am a Jew, or a Catholic, or a Protestant, or a Negro, or an Indian, or an Oriental, or a Puerto Rican;" "I am an American;" and "I am a man."

DESEGREGATION CREATES PROBLEMS, TOO

by I. N. Berlin.*

Reviewed in *Saturday Review*, June 15, 1963, from "*Integration vs. Segregation*," Hubert H. Humphrey, Editor.

(230) EFFORTS to end *de facto* segregation in the schools have, in some instances, resulted in educational segregation that has serious implications for the mental health of both teachers and students.

When children of minority groups are driven by bus to schools in upper middle-class areas to reduce the *de facto* segregation found in the neighborhood schools, both teachers and students often are faced with new problems that they have not anticipated or been prepared for. The

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efforts of citizens' groups and especially the N.A.A.C.P., in arousing the citizenry against *de facto* segregation must not end when a new method of apportioning school populations occurs. Moreover, the citizens' groups need to be aware of some of the possible adverse effects of their pressures on educators which tend to result in new kinds of segregation.

Many of my colleagues in education throughout the country have expressed concern that the fear of being accused of racial discrimination has led school people to avoid dealing with destructive, unruly, and aggressive behavior by Negro youngsters as they would with similar behavior on the part of white children.

More serious is the fear of arousing cries of racial discrimination when teachers begin to help the educationally backward Negro child to learn and expect him to do academic work he has not been asked to do in other school situations. Many Negro youngsters find themselves academically far behind other members of their class. They require a good deal of help and need to make a great effort to catch up. Since such efforts have not been expected of them in other schools, many children in these circumstances feel angry and defiant. (231) They often begin to clamor that they are being treated unfairly. Rather than risk such an uproar, in many schools administrators advise their teachers *not* to expect much from these students, in fact, to just let them sit.

Here is discrimination of another kind. Smaller classes and higher academic standards may not be the hoped-for boon for these youngsters.

Educators are well aware that children from economically deprived families often have difficulties and problems in learning because their parents' primary concerns are food and existence, not education. Many of these children have not been helped by any adults in the home to experience the pleasures that come from learning and achievement. Frequently their parents have not had a chance to experience such learning themselves. In the overcrowded classrooms of many cities, staffed by under-

paid teachers with meager equipment, it becomes miracle that some children do develop a desire to learn and do learn. But for many, school is a holding action; there is little pleasure in it. They are bored, restless, and unhappy, because their energies are not used in any constructive and meaningful way. The boredom and restlessness leads the vigorous child to unruly and boisterous behavior, and the child without much energy to withdrawn, sullen, apathetic reverie.

In this way the never-ending circle of academic uninterest, failure, and behavioral difficulties begins for many youngsters.

While all segregated schools are not overcrowded and deficient in the stimuli necessary for learning, statistically, the overwhelming majority are. Similarly, some Negro children from segregated schools have no difficulty at all in adjusting to an integrated school. These youngsters have learned to enjoy academic achievement and are good students who will benefit very quickly and very substantially from the new situation. However, most Negro youngsters from deprived families have had very traumatic experiences with learning at home and at school.

When children who have had these experiences are taken to a school in another neighborhood and placed in classes with children who have not been handicapped and are therefore far more effective in the mastery of academic material, their academic retardation makes them feel out of place, uneasy, anxious, and depressed. They yearn to learn. They want very much to become accepted in the new setting and yet they feel so hopelessly behind the other youngsters (232) that they begin, almost inevitably, to resort to the only behavior they have learned to use to cope with such distressing feelings. Such behavior makes it very difficult for the teacher, who has not been made aware of, and therefore does not understand, the meaning of this sequence, to want to work with the child.

I am concerned not only with the welfare of the child in the school and the effects of continued educational segregation, but also with the mental health of the teacher because she has thus been placed in a psychologically un-

tenable situation that has potentially serious results for her.

Most teachers get their satisfactions in an underpaid and overworked profession from helping children learn. They know that helping children to get pleasure and feelings of self-worth from mastering academic tasks and acquiring skills is a prerequisite for any successful achievement in living, and especially any success at working at demanding jobs in our highly technical society. Teachers get their feelings of self-worth and pleasure from their effective help to children.

In upper middle class areas, the parents are largely business and professional people who value learning, expect their children to achieve in school and work closely with the teachers. Such schools offer the most sought-after teaching assignments and to them come the teachers who place high value on teaching, learning and academic achievement. Ostensibly these are the very teachers who should be able to give the most help to the Negro child who needs to be helped. But because they value learning and enjoy teaching they often resent children who have little interest or desire to learn. However, they have usually learned that with persistent effort, endless patience, and parental cooperation they can help most children begin to learn and even in time to enjoy it. In most situations they therefore persist through the clamor, protests, excuses, weeping and resistance until the child finally understands that he is expected to work and to stay with each task until it has been mastered. Such mastery results eventually in beginning pleasure and finally in enjoyment of academic achievement.

If the teacher should fear that her persistence may be misconstrued by parents and others as discriminating behavior, and if she is encouraged by administrators not to create a fuss, then she may not make the necessary effort and the whole point of racial desegregation is defeated.

(233) Herein lies the dilemma. If she does not do her best job, if she does not work as effectively to teach the Negro child as well as the white child to master academic skills, she has failed in her most satisfying activity, teach-

ing. She is being neither an effective teacher nor honest and forthright with herself. Eventually such a realization on her part will affect all of her teaching. The youngsters who are not worked with effectively will of necessity be bored, feel deprived, and actually discriminated against, and therefore will become increasingly disruptive and an even greater burden to the teacher and the school.

If the teacher does her job as best she can, if she does persist and make every effort to help the reluctant Negro child to begin to work and to learn, and this does arouse the child's sensitized parents and creates an incident in the school, she may face the ire of school authorities and be considered by them a failure as a teacher.

How, then, can this dilemma be solved?

It seems to me first, that it needs to be anticipated by school authorities, teachers, parents, and civic groups. Then they must plan together how to help the child, his parents, and the educator to work out the inevitable problems.

Further, it becomes important that the teachers and administrators come to understand how these youngsters feel when they are brought into a new school situation, especially those who are at a serious academic disadvantage.

The only way many of these children have learned to master anxiety, tension, and unease is by loud, boisterous, disturbing behavior, which at least evokes a known and predictable response from authorities. With this in mind, teachers and administrators may be able to anticipate and prepare themselves and the other children to deal with tension and anxiety. Continued efforts until the children are acclimated to their new surroundings require preliminary orientation of school personnel and children. The new child needs to be told in advance that he may feel such tension and anxiety, but that everyone will try to help him until learning becomes easier for him; other, more fortunate youngsters can be enlisted to help with profit to all.

These are not problems, it should be remembered, that occur only as a result of segregation and discrimina-

tion. Many of my colleagues in education tell me that such problems are becoming increasingly prevalent in all-white schools. Here also the child's learning (234) difficulties, which stem from parental emotional difficulties and the parents' failure to learn in many areas themselves, result in clamor at the teacher's insistence that the child learn. Such clamor often angers parents, who have never themselves been able to help the child learn or insist that he follow through on any task. The anger is often a reflection of the parents' unrealistic hope that the school will do the parental job. These troubled parents are usually vocal enough to intimidate some school authorities who counsel their teachers to let the child sit. Such administrators thus compound the problem for the conscientious and idealistic teacher, the non-learning child, the troubled parent, and the entire school system.

The awareness of civic groups and educators that efforts at racial desegregation require continued vigilance, cooperation, and continued education of all concerned may make educational desegregation and equal opportunity to learn more of a reality.

EDUCATIONAL PROBLEMS OF SEGREGATION AND DESEGREGATION

by John H. Fischer.

From "*Education in Depressed Areas.*"
A. Harry Passow, Editor.

(290) To say that the problems of race relations in the United States are complex hardly helps to clarify our situation, but, unless the complexity of this matter is seen and taken constantly into account, no single step is likely to be very useful.[1] The problems of American education are no less complex. In a nation as diversified as ours, universal education can never be simple, and it is universal education, with emphasis on both adjective and noun, that we must now achieve. As the issues of race relations permeate almost every aspect of our life, so events in our schools are interlaced with virtually everything we do or hope to do. The difficulties of operating schools which can cope successfully and, as they must, simultaneously with both racial and educational issues are therefore among the most puzzling of all the problems facing the American people.

The other side of the coin, however, is that the benefits that can flow from the solution of these two problems will be of a magnitude comparable to the difficulties themselves.

Virtually all the purposes for which our schools are maintained may be grouped under two major classifications. First, the school is expected to give every student the opportunity and the means to develop to the full whatever individual potential he may have. One purpose of the school, to say it more briefly, is to help each student make the most of himself.

The second purpose is related to the first but not entirely congruent with it. This is to induct the young per-

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[1] Prepared for delivery at the Fourth Annual Conference of the Commission on Civil Rights, Washington, D. C., May 3, 1962.

son systematically into the culture and society to which he is an heir and in which he should be a partner. The school's success in respect to this purpose must be gauged not only by the competence of its graduates but by the quality of their sense of moral responsibility.

By viewing what we do with any child, of any race, against these considerations, one personal, the other social, we should be able to reach (291) reasonably sound conclusions about the effectiveness of our schools and the extent to which their performance approaches the ideals we project in our statements of philosophy.

Limitations of time make it impossible to include in this paper more than passing reference to the fact that the educational problems of desegregation and integration have important political, legal, and social aspects. I shall concentrate upon the more purely educational dimensions of the matter, which is to say its cultural and psychological aspects.

The temptation is always strong to say that the Negro child should be seen merely as any other child, respected as an individual, and provided with an educational program that will best meet his particular combination of needs. Of course the Negro child, like every other child, is entitled to be treated as an individual. Such treatment is the only sound basis for projecting his or any other child's education, but the easy generalization does not always come to grips with the whole truth.

The American Negro youngster happens to be a member of a large and distinctive group that for a very long time has been the object of special political, legal, and social action. This, I remind you, is not a question of what should be true, or might have been, but an undeniable and inescapable fact. To act as though any child is suddenly separable from his history is indefensible. In terms of educational planning, it is also irresponsible.

Every Negro child is the victim of the history of his race in this country. On the day he enters kindergarten, he carries a burden no white child can ever know, no matter what other handicaps or disabilities he may suffer.

We are dealing here with no ordinary question of intercultural understanding, although admittedly cultural difference is a part of the difficulty. Nor are we concerned with only the usual range of psycho-educational problems, for the psychological situation of the Negro child is affected by quite special social considerations.

I recognize the hazard in speaking of "the Negro child." It is equally unsatisfactory to speak of "the white child" or "the Puerto Rican child" or "the Spanish-American child" as though any child could be encompassed in a stereotype. Whatever a child's ethnic or racial background, he may be bright or slow, attractive or unpleasant; his parents may be rich or poor, well-educated or illiterate, responsible or shiftless. Every racial group distributes itself in some fashion over the whole social and economic scale. But when all the variability is conceded, it cannot be denied that every American Negro child must expect to encounter certain problems which none of our other children face in quite the same way.

Many of the recent efforts to integrate Negro pupils into the mainstream (292) of American public education have been built on the assumption that the problems are essentially administrative, legal, or political. As a consequence, we have seen drives for what is called "open enrollment" and other schemes to bring about, usually through directive action, a desired combination of races in particular classrooms or schools. Having worked in school administration for some twenty-seven years, I claim some knowledge of at least its limitations. Although I hold that administrative procedures and actions can be useful in education, I grow steadily more certain that no major problem of education—by which I mean really effective teaching and learning—has ever been solved solely, or even primarily, by legal or administrative action. To be sure, such action often lays the necessary groundwork and provides the setting in which good teachers may carry on their work, but the critical point in any educational system is found ultimately in the relation between the teacher and the pupil.

What, then, can be done to produce the sort of pupil-teacher relationship that will contribute most to the tasks we are thinking of today?

For one thing, we must continue to recognize the element of cultural difference. As the Educational Policies Commission pointed out in a recent statement, a principal part of the difficulty of what the Commission calls the "disadvantaged American" is the fact that a substantial minority of Americans have grown up in cultures which are not compatible with much of modern life. This minority consists by no means only of Negroes, nor are all Negroes culturally disadvantaged. But vast numbers of them are, as a direct consequence of legal and social segregation.

The situation is not new. The mountain whites and rural Negroes, among others, have lived in cultural isolation for a long time. Now, however, the negative influence of poor economic conditions in their former homes combined with the positive illusory attraction of the city have caused a vast and growing migration. The congregation of tens of thousands of these people in places for which their customary living patterns are ill-adapted tragically dramatizes their cultural dislocation.

Many of the Negro children who now come to school are the victims of their parents' lack of knowledge and of schooling. The parents in turn are the victims of a situation over which they have had little or no control themselves. Parents and children alike elicit sympathy and attract charity, but praiseworthy as these responses may be, they form no adequate approach to the education of the disadvantaged urban child. The response of the community and the school must be based also on objective knowledge and mature understanding of the underlying difficulty and an inventive turn in mind among teachers and administrators. Teaching reading, for example, to a first-grade child who has never seen an adult read (293) anything requires an approach quite different from one appropriate to a child in whose home books are as normal as food.

Similarly, a child who has never known sustained conversation with his parents must actually learn the skills of continuing discussion before he can learn much else in school.

Nor is it enough to say that the school should accept the child where it finds him and raise him as high and as fast as it can toward an adequate level of cultural attainment. To be sure, this is one of the school's functions; no teacher ever succeeds unless he first establishes rapport and communication with the pupil at the pupil's level. But the school's procedures and its success will necessarily differ between the child whose home background daily complements what the school does, and the one who is caught, so to speak, in a cultural downdraft the moment he steps outside the school.

In dealing with a population which is racially and culturally integrated, the school must begin by encouraging teachers to understand the special factors in the backgrounds of all their children, to take these differences imaginatively into account, and to build curricula and teaching techniques that reflect not only idealism but realism as well.

In addition to the cultural aspect, intellectual considerations are involved in meeting the problems of racial integration. A good school is responsibly concerned with all of the aspects of a child's development, but the central purpose that must run through all sound education is the development of intellectual strength. Unless the school is able to help every child to use his mind effectively, none of the other purposes of education can be satisfactorily achieved. We customarily cite physical health as a fundamental goal of education, but unless the child learns to apply his own intelligence to the problem of remaining healthy, he is not likely to do much either for his own well-being or for the public health of his community. The young person who does not become critically thoughtful about moral values, who behaves well only when someone is watching him or forcing him to conform, cannot be trusted to manage his own morality. But the school's success in pursuing this central purpose of education is sub-

ject, like so many of its other efforts, to what happens to the pupil outside the school.

In respect to the development of intellectual competence, many Negro children face special problems that should be better understood than they often are. Obviously many Americans of Negro ancestry have attained distinction in fields requiring intellectual eminence and millions of others daily apply their minds with excellent results in more humble ways. Yet the fact remains that during years of oppression, first under slavery and later under more subtle forms of discrimination, the opportunities for (294) large numbers of Negroes to apply their own rational powers with initiative and freedom to important problems have been far more limited than the opportunities available to other racial groups. Many Negro children, therefore, carry the disabling scars of the culture in which they were nutured, a culture which encouraged the use of muscles and not only discouraged but often penalized those who sought to use their minds creatively. The school must take all of this into account and build programs and provide opportunities which not only reflect these facts but move aggressively to compensate for them.

Every educational problem has its emotional side, and the special problems of educating Negro children in desegregated schools have theirs. Not being a psychologist, I do not intend to examine this complex question at any length. But there can be little doubt that the education of many Negro children is adversely affected by emotional considerations. The fact that it is often difficult to distinguish among the cultural, the intellectual, and the emotional aspects of education is one reason why teaching any child is so complex.

One of the most serious of the details is the problem of motivation. The Horatio Alger story is a well established part of our folklore, but few Americans would argue that the typical Alger hero would have made it had his skin been of a darker shade. The sense of frustration which any minority child may experience is heightened in the case of the Negro child, who discovers all too early that his mi-

nority has both a special history in the United States and quite unique problems. As a consequence, his attitude toward himself and toward his racial group complicates the effort to help him secure an adequate education. In some cases, he may rationalize his failures by attributing them to limitations which do not, in fact, exist for him. In others, he may develop an understandable aggressiveness which will neither compensate for external difficulties nor correct his own shortcomings. The wise and well-informed teacher is aware of these emotional complications and undertakes to deal with them in positive ways.

In the face of these facts, and in the light of our democratic values, what guidelines for policy and practice in the conduct of American public schools are implied?

In the first place, it is essential to emphasize on every possible occasion and in everything we do in schools that the rights of students, the assessments of their needs, and the release of their potentials must be approached on an individual basis. What I have said about the identification of students as members of groups is important only insofar as it helps the teacher to understand a particular student. My point, you may remember, is that the individual cannot be understood unless he is seen against the (295) history from which he has come and in terms of the situation in which he currently lives. But his education is peculiarly his own. The opportunities afforded any child may not properly be limited because he happens to be a member of one or another racial group. In this connection, again, we face the hazard of stereotyped treatment, a hazard which at all costs must be avoided.

This implication for policy and practice cuts more than one way, however, for just as certainly as no person should be subjected to discriminatory treatment which depresses him because of his race, so it follows that none should be given preferential treatment simply because his complexion or his ancestry is different from another's. A practical application of this principle may arise if a school organizes classes according to the academic ability of students. If, after the most reliable estimates of ability the school can make, it should develop that one classroom

contains pupils largely of one racial group while a second classroom is composed mostly of another, the school should not be criticized for the result. If, on the other hand, the school authorities have used an ostensibly educational device simply to justify some predetermined racial arrangement, the action is totally indefensible. It should be attacked not only as a violation of the constitutional rights of children but as a flagrant instance of professional malpractice.

A second guideline for the development of policy and practice centers about the concept of equality of opportunity. "Equality of opportunity," as we customarily use the phrase, means much more than a schoolroom desk for every child. It connotes, rather, a condition in which every American may rightfully expect to find himself in fair competition with every other American. This condition is achieved and maintained by the operation of a host of agencies and forces, some political, some social, others economic or cultural. The public school has never been the only agency concerned with producing equality of opportunity, but its role is fundamental to the total effort.

In the cases of some Americans, and in that of the Negro American most dramatically, our traditional system has failed for a long time and in countless ways to provide that equality of opportunity that should be the condition of all our people. Recent improvements have helped correct the imbalance, but much more correction is required. Especially is this true of children whose parents and grandparents were deliberately, systematically, and by law denied what is now clearly recognized as fully equal treatment.

Is it not a reasonable contention—and a just one—that to compensate for past injustice, we should offer these children educational services beyond the level of what might be called standard equality?

(296) Could it be that to achieve total equality of opportunity in America we may have to modify currently accepted ideas about equality of opportunity in education itself? Is it conceivable that some of our children are entitled to more and better educational opportunities than

most of the others? In fact, of course, the question has already been answered. Thousands of mentally and physically handicapped children, regardless of race, regularly receive teaching service, physical facilities, and supporting services more extensive and more costly than those furnished children who are considered physically or mentally normal. In the cases of many Negro children —and the generalization would apply also to certain other minority groups—we may need to substitute for our traditional concept of equal educational opportunity a new concept of compensatory opportunity.

Such compensatory opportunity might take the form of lower student-teacher ratios in certain schools, or additional guidance services, or better physical facilities. The idea might mean more scholarships for higher education, or, in some cases, custodial and boarding care for children whose welfare required their removal from a crippling environment.

I doubt that anyone is in a position now to say precisely what the concept of compensatory educational opportunity would mean in every case, but my purpose here is not so much to answer the question as to raise it for discussion. The concept of compensatory opportunity should certainly not be restricted to any one group, and, as I have suggested, it has already been applied to other types of disability. But, to the degree that a child's race or cultural background handicaps him—and especially where the handicap is attributable, at least in part, to earlier governmental action—they should be taken into account in adjusting his educational program.

A third guide to educational policy and practice seems relevant to this discussion. If we are to keep the focus of our educational effort on the welfare of the individual child, we shall do well to avoid what is sometimes called social engineering. The very term is inconsistent with the purposes and values of democracy. Even the most desirable end does not justify manipulating people to create a structure pleasing to some master planner. To put it precisely, I am disturbed about the growing pressure to

locate schools, draw district lines, and organize curricula in order to achieve a pre-determined racial pattern of enrollment. By no means am I opposing the desirability of having in the same school children of different racial backgrounds. Quite the contrary! But decisions about school organization based entirely or primarily on racial criteria seem to me to violate the principle of non-discrimination. All school districting arrangements should provide a maximum of free choice for all children, subject only to common sense protection against unnecessary overcrowding. Indeed, if (297) I had my way, I should have no school attendance districts at all. In a well conducted school system every school should be so good that those who live near it would never think of going elsewhere except for some extraordinary reason. In the case of secondary schools, or others where specialized curricula might be a factor, the importance of the neighborhood location would, of course, be somewhat less significant. But here again the greatest possible freedom of choice should be allowed all pupils, so long as they are qualified for the programs involved.

The concept of freedom of choice should be interpreted, however, only to allow positive choice and never to permit any group to restrict the opportunities of another. The basic principle is that all public schools of a community belong to all the people of the community, that none is the exclusive preserve of a single racial group.

The most offensive aspect of the engineered approach is the assumption that any group can be improved if members of another race are introduced into it. If all the races of mankind are equally to be valued and respected, a group composed of thirty members of Race A cannot be improved merely by substituting a few members of Race B. If, on the other hand, the group is to be improved with regard, let us say, to mathematical performance, the introduction of a couple of mathematical wizards will obviously raise the average. A musical group short of tenors can surely be improved by recruiting three good tenors, but the point of origin of their grandfathers or the color

of their hair are scarcely relevant criteria. We cannot have it both ways: we cannot say that race *per se* makes no difference and then argue that important decisions should be based on this inconsequential factor.

To summarize then, briefly what I have tried to say about the educational problems of desegregating schools:

1. The focus of sound teaching is always on the individual, for education is an intensely personal matter, having its principal effect always within the person.

2. If we are to achieve good education, we must respect the individuality of each student, relating his instruction to his background, his needs, his possibilities.

3. To achieve equality of opportunity within the whole of our culture, it may be necessary to offer those who are handicapped by their history or their current situation not merely equal, but compensatory educational opportunity.

4. In the organization of education, many considerations are important, many characteristics are relevant, but racial differences in themselves are not. In the administration of schools, therefore, the manipulation of pupils on purely racial grounds is irrelevant and improper.

THE GOALS OF INTEGRATION

by Oscar Handlin.*

(From *Daedalus*—Winter 1966)

(268) SINCE 1954, and even more so since 1960, Americans concerned with resolving the dilemma posed by the Negro's plight in a society committed to equal rights have lived in a state of crisis. The destruction of the concept of "separate but equal" in the Brown Case was the culmination of a quarter-century of re-examination of the premise that the colored men of the United States could be held permanently in a position that was actually separate but unequal. The implications of that decision were not immediately clear; nor have they been clarified in the intervening eleven years.[1]

Had the decision been immediately acceded to, it might have been possible to begin at once to explore its consequences. Instead, the necessity for fighting a succession of guerrilla actions behind the lines has delayed any consideration of long-range problems. Attention has been so narrowly focused on tactical issues that there has been no time to consider ultimate goals. The civil rights movement, which is actually a congeries of quite disparate efforts, maintains the pretense of unity only by a resolute determination not to think of long-term objectives.

However, we know all too well, from an earlier conflict a century ago, that battles and even wars can be won

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and yet the fruits of victory lost through men's haziness about what they are fighting for. In the present situation, the inability to define the ultimate goals of the civil rights struggle is an unacknowledged threat that complicates immediate tactics and that may deprive this momentous upheaval of its meaning.

In the absence of defined goals, it is difficult to estimate the character or pace of change or even to judge its direction. Under these circumstances, organizational controls and leadership weaken. There is confusion about which objectives are salient, and issues tend to crop up of their own accord. Action is sporadic, local, and (269) discontinuous and is not related to any general standard of importance. Explosive activists, always ready to precipitate conflict, find tactical opportunities to determine the questions to be fought over while the established leadership has to tag along to maintain its influence. At the same time, the atmosphere of continuous crisis generates the obligation of solidarity. Those who dissent must be silent or be counted as sympathizers of the antagonists. No one wishes to be known as an Uncle Tom or a white liberal.[2]

Recent demonstrations of solidarity on behalf of civil rights have been impressive. The march on Washington in 1963 and from Selma in 1965 showed the extent to which diverse elements in American society coalesced in support of a common cause. These occasions have ceremonial significance; they manifest the extent to which a variety of people affirm their dislike of brutality and their faith in the orderly methods of democracy. There is no difficulty in eliciting unanimity of support for the slogan of equal rights as man and citizen as long as the terms remain vague and undefined.

But it is erroneous to regard these events or professions of sentiment as expressions of unity with reference to a program of action. The calls for brotherly love sounded on the platforms do not reduce the intensity of the hatreds in Harlem. White resentment at black demands is also stiffening. It is a mistake to judge the extent

of backlash by the refusal to commit suicide in 1964; the California vote on Proposition Fourteen that year was more revealing than the national vote against Goldwater. Popular sentiment is still for tolerance and against prejudice; but the time is approaching for a test of the meaning of that preference.[3]

Insofar as the civil rights movement has proceeded beyond the call for brotherly love or for equality, it has ventured upon unsure ground. Civil rights demands in Alabama and Mississippi are comprehensible; the promises of personal security, the ballot, and decent schools are familiar and long overdue. But the issues blur in the newer context of New York or Chicago or Atlanta where these minimal gains are well on the way to attainment. There the failure to define appropriate goals has created future difficulties, the shape of which is already apparent. The new problems are important not only because an increasing percentage of American Negroes live in an urban environment, but also because the range of decisions involved will confront the nation long after the difficulties of the rural South are resolved.

(270) In the earlier stages of the struggle for equality, it was enough to ask that the government be color-blind. The barriers that confined the Negro were the products of law, and it was necessary to demand only the equal treatment that the Constitution guaranteed. Desegregation was the response to segregation; and it was a response that attracted the support not only of other underprivileged minorities but also of many Americans who found it in accord with their own creed of individual dignity and equality of opportunity.

In the past decade, emphasis has gradually and imperceptibly shifted from desegregation to integration, but without adequate awareness of the consequences and often with a profound ambiguity about the nature of the desirable goal.

The term integration sometimes refers to the openness of society, to a condition in which every individual can make the maximum number of voluntary contacts

with others without regard to qualifications of ancestry. In that sense, the objective is a leveling of all barriers to association other than those based on ability, taste, and personal preference.

But integration sometimes also refers to a condition in which individuals of each racial or ethnic group are randomly distributed through the society so that every realm of activity contains a representative cross section of the population. In that sense, the object is the attainment, in every occupational, educational, and residential distribution, of a balance among the constituent elements in the society.

In crucial matters of public policy, antithetical consequences follow from the two positions. The one calls for improvements in the Negroes' opportunities for jobs, housing, and schooling even though the group may remain as separate as before; the other puts a primary emphasis upon racial balance.

The civil rights movement has never made a clear choice between these alternatives, nor has any spokesman fully articulated the implications of the two points of view. But increasingly in the past five years, the thrust has been in the latter direction, toward an organization in which every sector of society is racially balanced; and it is in that sense that the term integration will be used in the discussion which follows.

In part the change of recent years was due to the very intensity of the struggle against an intransigent opposition. More important, however, was the perception that the leveling of governmental barriers (271) was in itself inadequate to remove the handicaps under which colored people labored. The vicious cycle of slum housing, poor schools, lack of skills, and low income trapped the urban Negro and widened rather than closed the gap between him and others in the society. Deprivation became a pattern of life that hopelessly handicapped him in the competition for desirable places. The simple neutrality of government would not relieve him of these shackles; positive action to compensate was essential. The state was

to intervene to assure the disadvantaged a due proportion of well-paying jobs and to balance the population of neighborhoods and schools in a thoroughly integrated pattern. That assurance was deemed necessary to restore equality to the disadvantaged. Hence the campaigns to destroy *de facto* segregation in the public schools, to secure preferential hiring and job quotas for Negroes in industry, and to manage housing in the interest of mixed residential neighborhoods.

This profound shift in the tactics of the civil rights movement during the past decade has come without any clear estimation of the consequences. To clarify those consequences, it is necessary to resolve the ambiguities in the goals of the civil rights movement. Is the ultimate objective to eliminate the differences that actually divide the population of the United States and thus dissolve its people into a single homogeneous and undifferentiated mass? Or will it be possible to reach toward equality while retaining the social subgroupings produced by a heritage of diversity and by the problems of managing a free population of almost 200 million? The answer, upon which the welfare of all Americans rests, should, to a greater degree than in the past, influence the tactics of the civil rights struggle.

The view of integration as racial balance rests on two fallacious assumptions—that the position of the Negro is absolutely unique in the American experience and that racist prejudice is so thoroughly ingrained in the people of the United States that only positive exertions by the government will assure the colored man his rights. Neither proposition conforms to the evidence.

The Negro is unique, it is argued, because his color sets him off from the majority more decisively than the traits of other ethnic groups did and because slavery crippled him so seriously that he cannot compete on equal terms and needs a crutch to help him along.

(272) Certainly slavery was a more traumatic experience than the centuries of persecution, the hardships of migration, and the generations of depressed proletarian

existence from which the Irish peasants suffered. But the argument slights the Negro's powers of recuperation and exaggerates the extent to which the damage caused more than a century ago remains a permanent part of his character. There has been a tendency to underestimate the extent of his achievements even in the fifty years immediately after emancipation, under conditions immensely more difficult than those of the present. When one considers the backwardness of the Southern economy after 1865, the exclusion from political power, the racist prejudices, and the bitterness left by a great war, it was a respectable accomplishment to have formed stable family units, to have developed productive skills, and to have created an array of churches, lodges, and media for cultural expression, with the limited resources the group possessed. Few people released from bondage in any society have performed as creditably.[4]

The disadvantages from which the Negro suffers in 1965 are less the products of the plantation than of the great migration to the city in the past fifty years; and that experience he shares with the other ethnic groups who have participated in American urbanization. Of course the Negroes are different from the Poles or Italians or Jews, just as those peoples differ among, and from, each other. The differences, however, are not of kind but of degree, and they are largely explained by the recency of arrival of the colored men, by their greater numbers, and by their dense concentration in a few cities. The problems of prejudice and acculturation from which the most recent newcomers suffer had their counterparts among the earlier arrivals.[5]

Nor is color the sole and unique sign of ethnic visibility. It is no doubt the most prominent mode of social recognition; but much depends upon the social assessment of this as of other physical traits. The Japanese-Americans are far less visible in 1965 than they were in 1940 although their color has not changed. And the Kennedys are still identified as Irish after five generations in the New World, and despite their wealth, prominence, and whiteness.

The assumption that color has a unique differentiating quality rests upon the argument that American society is inherently racist, its promise of equality reserved only for the white man. It has become fashionable in the past few years to sneer at Myrdal's statement of the American creed of equality and to urge that only (273) forceful measures will restrain the propensity to prejudice.

There was a racist period in American history in the sixty years after the end of the Civil War; but the hatreds of that period were peculiar to the time and place. Much more significant is the deeper tradition of equality before and since that interlude. The agony with which slaveholders like Thomas Jefferson and George Mason considered their own situation, the tortured efforts of early scientists to understand color differences, and the torment the abolitionists caused in the North and the South were the results of the inability to square the existing labor system with the belief in the brotherhood of man and the commitment to equality. And the changes since 1945 have been the result not of fear either of the Negroes or of Africans but of the awareness that equality is a necessary ideal of the Republic.

Furthermore, the Negro, while the most prominent, was not the sole target even in the racist period. Prejudice was not limited by race, creed, national origin, or previous condition of servitude. The majority of the victims of lynchings in those years were Negroes; but there were 1,293 white victims of the rope and faggot as against 3,436 black. Italians in New Orleans, a Jew in Georgia, and Greeks in Omaha also met the fury of mob violence. The Ku Klux Klan of 1924 was more concerned with Catholics and Jews than with colored men.[6]

Above all, the response of Americans to the crisis of the past decade reveals the effectiveness of the appeal to the creed of equality. Even Bogalusa is not South Africa; and the inability of the open advocates of racism to attract support is the best evidence of the extent of commitment to that creed.

In estimating the meanings of integration, therefore, it is entirely appropriate to examine the analogous if not identical experience of other ethnic groups. Their process of acculturation will throw light on the need for defining the goals and the strategy of the civil rights movement.

Barring a major overturn of the American social system, which at the moment appears neither probable nor desirable, change will come within definable limits and will involve choices among alternatives. And decisions on this matter will be more effective if they come within an informed context that makes it possible to envision their results.

The inequities which survive from the past cannot be understood or remedied without a comprehension of the social order that (274) produced them. They are the pathological manifestations of a mechanism of adjustment which permitted that order to function. Their successful removal requires a consideration of the function they serve; otherwise, the alternatives are grim. Either the order will collapse to the injury of everyone, white as well as black, or else uncontrolled alternative modes of adjustment will recreate and perpetuate the diseased condition.

This was the error of most of the abolitionists, who thought they could extirpate slavery without considering the effects upon Southern society. The result by 1900 was the restoration of the Negro's subordination in other forms than slavery.[7]

Hence, the importance, in any effort to foresee future developments, of an understanding of segregation, of its relationship to equality, and of the probable effects of integration.

Popularly speaking, segregation was a response to the dissolution of earlier forms of stratification. In a slave regime, the physical separation of the dominant and subordinate populations was superfluous and inconvenient. In other relatively static societies, where places were rigidly defined and the symbols of status clearly fixed by law or custom, groups could mingle with considerable promiscuity because there were no problems of recognition and

no dangers to the established hierarchy of persons and groups.[8]

In the South, segregation was a response to the abolition of slavery and to the threat to white superiority posed by Reconstruction. The pattern that emerged in the last quarter of the nineteenth century used the law to fix the identity of the Negroes and to confine them to inferior social places. To those ends it established a rigid etiquette of behavior and separate institutions that restricted the opportunities of the former slaves for education and employment. Within the limits thus established, residential separateness was unnecessary. The measures that implemented segregation were deliberate on the part of the whites; the purposes were clearly understood at the time. As for the Negroes, their wishes were of no consequence; once they were excluded from political power, violence induced their acquiescence. The result was a kind of order, the price of which was inequality of rights.[9]

In the freer, more fluid, and more mobile sections of the country, segregation was achieved by withdrawal rather than by restraint and was voluntary rather than compulsory. As the Northern cities expanded with the influx of waves of heterogeneous newcomers, the old residents moved away, and the new arrivals sorted themselves **(275)** out in neighborhoods that reflected their own sense of community. Education, employment, religious affiliation, and associational life fell within lines that were not imposed by law or by violence but were shaped by informal and largely spontaneous connections of kinship or community.

Although the Northern Negro suffered from prejudice as did the Southern, society was not polarized but fragmented; and he found himself but one of many groups comparably situated, some of which suffered from disabilities similar to his own. Negroes did not confront a homogeneous white community with a single chain of command leading up to a unified leadership. They found a place among numerous communities, each with its own power structure and its own leaders.[10]

The function of separateness in this context was not to establish or to perpetuate the inferiority of one group, but rather to accommodate diverse patterns of life that were the products of differences in ethnic and sectional heritage, or in economic and social background. By reducing contacts at the points of potential tension, this adjustment permitted each group to organize its own institutions without the oversight or interference of others, and yet was flexible enough to preserve some degree of order in a highly complex society. Furthermore, the expanding cities possessed enough free space and their organization was so loosely articulated that individuals who preferred not to affiliate could refrain from doing so and could get along in whatever degree of detachment they wished. The ghetto arrangement was therefore totally different in intention as well as in form from the segregation of the South.

Indeed the fact that the pluralistic order took account of actual differences within the population made it possible to preserve the *concept* of equality. Not every man was equally qualified in terms of inherited capital, cultural traits, personality, and intelligence to pursue equally the goals of success in American life. But the pursuit of happiness was not a single, unified scramble in which every individual sought the same prizes and in which only a few could be winners while the rest were doomed to frustration. In the stated beliefs of the society, every boy could grow up to be President—of the United States or at least a railroad. Americans could cling to faith in that useful proposition because they never subjected it to the test of practice. In reality the disparity of aspirations and career lines drew only a few persons into the competition for those lofty places while relatively independent subsystems, with their own (276) values and rewards, provided satisfying alternatives to many more. The children of Irish or Italian parents did not count themselves failures if their lives did not follow a course identical with that of the children of the Yankees. They had their own criteria of achievement and their own sources of gratification.

The result was to take the edge off the harshly competitive psychological and social conditions of an open society. Pluralism permitted the deployment of the population in an intricate network of relationships and associations that facilitated cooperation at some points, but that left large areas free for the withdrawal of individuals and groups and that therefore minimized conflict-provoking contacts. There were manifestations of prejudice, discrimination, and occasional violence among many of the ethnic and occupational groups. Measured against the potential explosiveness of the situation, however, those were relatively minor. Until the migrations of the past half-century, Negro life in Northern cities was not essentially different from that of other ethnic groups. It had some distinctive problems as every other group did; but relatively small numbers and generally favorable conditions permitted an accommodation on essentially the same terms.

Neither in the North nor in the South is integration in the sense of racial balance a meaningful guide to proximate future action. Desegregation is likely soon to eliminate the vestiges of discrimination inherited from the Jim Crow era; and it may open the way to full participation by Negroes in the political and economic life of the nation, but it will do so within the terms of some approximation of the group life already developed. Integration, defined as the elimination of differences, on the other hand, demands of both Negroes and whites an impossible surrender of identity. The deletion of all memory of antecedents, the severance of all ties to the past, and the liquidation of all particularistic associations is not only unfeasible but undesirable. It would curtail the capacity of this society to deal with its problems under the conditions of freedom; and significantly some of its advocates are either altogether nihilistic or else do not flinch from the totalitarian methods and consequences that would be involved in achieving this version of integration.[11]

Only a small minority of Negroes, however, think in these terms. The vast majority understand that they are a group and will remain so; they seek an expansion of

their rights and opportunities, but (277) show neither a desire to merge with the whites nor any expectation that that will soon happen. Desegregation is a genuine issue; racial balance is a vague and confusing abstraction that turns their attention away from the genuine political, economic, and social problems they and other Americans confront.

The issue is perhaps clearest in the field of political action. No right is more basic than that to full and equal participation in the governmental process; and Negroes were quick to exercise the privileges of citizenship once they secured access to the ballot either through migration to the North or through the leveling of barriers in the South. Apathy was no more widespread among them than among other voters new to the suffrage. The colored people promptly assimilated the techniques of machine organization, and their power has increased steadily as their numbers have. With the appearance of a second generation, native to the city, they have begun to move into elective office at about the same pace as their predecessors did.

Three related factors continue to limit the effectiveness of their use of political power. The lack of competent leadership has enabled self-serving hacks and demagogues to push to the fore and has wasted on the quest for petty privilege the effort and energy that might have gone into improving the status of the whole group. The modes of collaboration with other blocs of voters have been slow to develop; and since the Negroes remain a minority, the ability to use their strength depends on alliances with others. Finally, Negroes have had difficulty in perceiving where their true interests lay when it came to such complex questions as education, urban renewal, and economic policy. In all three respects, they are repeating the experiences of earlier groups drawn into the processes of American democracy.

Nor is it to be expected that these people will be more enlightened in the use of power than their predecessors. Politics is not the cure-all that some naive observers consider it to be.[12] Post-Civil War Negroes in the South did

not use their strength any more effectively than did the Irish of Boston in the first quarter of the twentieth century. The same sentimental temptation to idealize the underdog that once built up exaggerated expectations of the proletariat now sometimes leads to hopes for a panacea in the activities of the Negro citizen. There is no more reason to expect political wisdom from the black than from the white resident of a slum or from either than from the suburban commuter. The vote is not an (278) abstract exercise in either intelligence or benevolence but a means of exercising influence on the processes that shape governmental decisions. For some time yet, Negroes will use it to serve narrowly defined group interests.

The removal of surviving restraints on the right to vote is obviously important; but integration is an irrelevant distraction which disperses energy and inhibits the development of responsible leadership which can take a full and active role in politics at every level. Political effectiveness will grow not through the weakening of the sense of identity but through the development of institutions that can clarify the group's interests, provide organized means of ascent to leadership, and retain the loyalties of the growing middle-class and professional elements in the colored population.

Integration in the sense of the elimination of distinctiveness is no more relevant to the economic plight than to the political plight of the mass of Negroes. The demands for preferential hiring, for assigned quotas of desirable jobs, and for a Black Man's Marshall Plan are sometimes presented as if they were the means of attaining racial balance and therefore of furthering integration. Actually, they are calls for the recognition of the special character of the group; and to the extent that they are heeded, they strengthen identification with it.

Measurement of the rate of Negro progress is difficult because of the recency of this migration to the cities and because gross comparisons of whites and nonwhites distort the actual situation. A large proportion of urban Negroes have been where they are less than twenty years, almost all of them, less than fifty years. The analogous migration

from Eastern and Southern Europe began in the 1890's and reached its peak between 1900 and 1910. The mass of Poles, Italians, and Russian Jews even in the prosperous 1920's, much less in the depression 1930's, had not made more rapid progress. Furthermore, the limitations of the census categories which recognize only whites and nonwhites obscure the genuine differences in occupation and income among the former and make comparisons invidious. Unfortunately, more refined data are difficult to come by.

It is undeniable, however, that a large percentage of American Negroes are confined to unskilled and poorly paid occupations at a time when technological changes reduce the demand for their labor. They therefore suffer more than do other sectors of the (279) population from unemployment, low incomes, and the consequent social deprivations. Furthermore, the same economic forces that contract the demand for their services and their position as late arrivals prevent them from developing the protected trades through which other groups maintained quasi-monopolistic control of some employment opportunities.

The difficulty is that no occupation in the United States—hod-carrier, teamster, machinist, shopkeeper, physician, or banker—ever represented a cross-section of the whole population. The social and cultural conditions that influenced recruitment to these callings did not prevail identically in all ethnic and sectional groups. Entirely apart from prejudice or discrimination, therefore, the chances that a given individual would follow one career line rather than another were likely to depend on an environment and on connections shaped by family influences.

Conceivably this pattern of recruitment could change. Since Jefferson's day, various utopians have dreamed of a mandarin system within which all infants start on equal terms and are directed by successive competitive tests of ability to their appropriate niches in life. This is the ultimate model of integration; and it would certainly put Negroes on terms of parity with all others. But, desirable

or not, this solution is visionary. It is hardly necessary to attempt to estimate the social and psychological costs of such a system or even to speculate about the difficulty of defining ability (intelligence?) in that context. The dominant tendencies in American life have consistently broken down any effort to create the rigid controls upon which development in that direction depends. The likelihood is slim that those tendencies will change enough in the near future to offer any promise of relief to the Negroes' problems.

A general assault on the problems of poverty may, in time, mitigate the difficulties from which Negroes suffer along with the other unskilled and therefore superfluous elements in American society. But some Negroes at least are not content to wait for that happy outcome and are struggling now for better chances as a group. Pressure on employers to assign a quota of desirable places to colored people may result in a kind of tokenism, advantageous to a few without easing the hardships of the many. But such adjustments do help the few; and both the tactic and its outcome sustain and strengthen the sense of group solidarity. There are already contexts—in some levels of government employment, for instance— **(280)** in which there is an advantage to being black, a condition which puts a premium on affiliation with the group.

In the last analysis, the welfare of the Negroes depends upon the health of the whole economy and its capacity to produce and distribute goods according to an acceptable pattern. But the last analysis is remote indeed. In the interim, the Negroes will use what power they can muster as a group for their own advantage. Preferential treatment in some high-prestige forms of employment will be justified not because it will improve the lot of the great mass of the unskilled, but because it is a means of opening some avenues of escape for the most qualified. At relatively little cost in efficiency, this device can create a pool of potential leaders with a stake in social order and at the same time break the identification of the race with poverty.

Hence the importance of education upon which, increasingly, access to the more desirable places depends. The Negroes started with the initial disadvantage of dependence on the weakest schools in the country—those of the South. Migration compounded their difficulties, and the environment of poverty adds to their handicaps. The need for improvement is unarguable.

The methods of effecting that improvement are by no means clear, however. The pressure for integration has called attention to the problem; but it has also confused the solution. For some elements in the civil rights movement, integration in the form of racial balance has become an end in itself more important than the quality of the schools. Martin Luther King's hit-and-run involvement in this issue in Boston, Chicago, and Cleveland shows the danger of the thoughtless transference of the tactics of one kind of struggle to another.

Partly this outcome is the result of the historic development of the school issue in the South, where segregation was a means of perpetuating educational inequality and Negro inferiority. There desegregation was an essential step toward equality. However, the slogans of that effort were uncritically applied to the separateness of the Northern schools which had an altogether different function. The imbalance of the Northern schools was not designed to create or maintain Negro inferiority; and its result was not always to lower the quality of the education available to colored people.[13] Yet there was no forethought about the consequences of the attempt to end what came to be termed *de facto* segregation.

Furthermore, in this matter, there is a striking division of opinion (281) among Negroes, covered up by the appearance of unity on such occasions as the school strikes. The most vocal persons in the civil rights movement are the most mobile, those whose aspirations reach furthest, those most irked by the identification of their color. Integration expresses their not fully understood desire to sever their ties with the past; and racial balance is a means toward that end.

This desire does not reach very far among the mass of Negroes. In such cities as New York and Boston, where open-enrollment plans offered parents an opportunity to send their children outside the districts of their residence, only a very small minority chose to do so. However the lack of response may be explained away, it reveals the limited scope of the appeal of racial balance.

Yet this issue in many places has overshadowed the far more important factors that enter into the Negroes' educational deprivation. And it is likely that time and energy will continue to be dissipated on the question of racial balance that might more usefully be expended on the quality of the schools and on the orientation of the educational process to the needs of the colored students.

The demand for racial balance has sometimes had a blackmail effect; it has forced concessions on municipal authorities willing to spend more heavily on slum schools than they might otherwise have in order to stave off the drive for bussing. But this tactic has also had the adverse effect of exaggerating the deficiencies of schools in Negro neighborhoods and thus of frightening away experienced teachers, of hastening the flight to the suburbs and increasing the rate of withdrawal to private and parochial schools. The insistence upon integration is thus self-frustrating, as the experience of Washington, D. C., shows. Further pressure toward racial balance will certainly weaken the public schools and leaves the Negroes the greatest sufferers.

The dilemma is unnecessary. There is no evidence that racial balance itself improves the capacity of the underprivileged to learn; nor that the *enforced* contact of dissimilar children has significant educational advantages. There is abundant evidence that deprived children have distinctive needs that require the special attention of the school. Yet the drive for integration has obscured, and sometimes actually impeded, the task of providing for those needs. Indeed the argument is now often being made that racial balance is desirable to meet the needs of white children.

Here, too, an awareness of the groups' identity and a determination to deal with its problems is the most promising path to equality. (282) The Negro deserves preferential treatment in education because his needs are great. But to receive it calls for the recognition of the special character of his situation, not for costly efforts artificially to commingle his children with others in the interest of the ideal of balance.[14]

Since the desegregated, but unintegrated, school is a neighborhood school, there is a relationship between the range of residential choices and the conditions of education. The Negroes suffer from poverty, from their recency of arrival, and—in housing, more than in any other sphere—from prejudice. It remains unfortunately true that some whites willing to work side by side with the Negro or even to vote for him in an election will boggle at accepting him as a neighbor. That hesitation is connected with the fact that the residential district, especially in the middle-class areas of the city, is also the setting of a distinctive communal life, with group-derived values and activities of its own. The presence of any outsider is a potential threat, exaggerated in the case of the Negro by fears of a mass inundation.

Something has been done—by law and persuasion—to quiet these fears; a good deal more can be done by these methods. But it would help if the fearful were aware that there is no widespread desire among Negroes for residential intermixture as such. Colored people are primarily concerned with the quality of housing; they do not value highly propinquity to whites. Talk about racial balance not only distorts the actuality of Negro intentions, but it heightens the very fears that may limit the freedom of the occasional black family that wishes to move to a mixed neighborhood. A recent study of middle-income Negro families, for instance, expressed surprise at the preference for ghetto residence and suggested that whites be moved in to encourage integration, as if that were a necessary and desirable end in itself. A state legis-

lative committee on low-income housing uncritically adopted the same goal. These proposals repeat the errors of New York City's experiment with benign quotas which deprived Negroes of the quarters they needed in order to save room for whites, all out of the concern with balance.[15]

Integration is a false issue. The problem is housing—how can adequate space up to present-day standards of decency be made available to the poor? How can all other colored families get fair value up to the level of their incomes, without being penalized for their race? For most Negroes these are the primary issues. They are (283) difficult enough without the complications of racial balance. The control of the urban renewal process, the role of government as entrepreneur, and problems of design and form will set the framework within which the character of the Negroes' future housing will be determined. And group cohesiveness will be of great importance in influencing decisions in these matters.

The development and strengthening of Negro communal institutions may also help normalize the situation of the colored family. The disorderly features of that position are well known—the absence of a male head, frequent illegitimacy and dependence—as well as their relationship to juvenile delinquency, crime, and narcotic addiction. But these characteristics have been too readily associated with the effects of the slave heritage. The servitude of the plantation may have left elements of weakness in the families of the freemen; but the extent to which sound family life developed among the Negroes between 1865 and 1915 is impressive, as is the extent to which it still prevails in the rural South closest to the slave setting.

A more plausible source of disorder is the effect of rural-urban migration with low income and slum housing at its destination. That correlation conforms to what is known about the changes in family life in other societies in which slavery has not been a factor.[16] It conforms also to the experience of earlier groups of migrants to American cities. Less than a half-century ago, the foreign-born resi-

dents of Irish, Jewish, or Polish slums faced comparable problems of matriarchal households and delinquency.

It was not alone the tradition of solidarity and discipline that contained the damage among these peoples, but also the fact that their families were encased in social and cultural institutions which imposed restraints upon recalcitrant individuals, established norms of behavior, and disposed of weighty sanctions for conformity. Negroes have been slower to develop similar institutions, partly because this migration came at a moment when government absorbed some of these functions, but also because in their experience separation meant segregation and bore the imputation of inferiority. Yet those men who, in the name of integration, deny that there is a significant role for the Negro press, or for Negro churches, or for Negro associations are also denying the group of its media for understanding, for expression, and for action. They would thereby weaken the capacity of the people who need those media to act on their own behalf.[17]

(284) It is the ultimate illogic of integration to deny the separateness of the Negro and therefore to inhibit him from creating the communal institutions which can help cope with his problems. Delinquency, poverty, slums, and inadequate housing of course concern all Americans; and the attempt to eradicate them calls for common efforts from every part of the nation. But history has given the Negroes a special involvement in these matters; and to deny the actualities of the group's existence is to diminish its ability to deal with them. To confuse segregation, the function of which is to establish Negro inferiority, with the awareness of separate identity, the function of which is to generate the power for voluntary action, hopelessly confuses the struggle for equality.

Clarification of the goals of the civil rights movement has immediate tactical implications. Desegregation is not the same as integration; Selma is not Harlem, Bogalusa, not Chicago.

Where violence, exclusion from the ballot, or state power has deprived the Negro of his equal rights as a man

and a citizen, it is his obligation and that of all other Americans to demand an immediate end to the discriminatory measures that aim at his subordination.

Desegregation will not solve any of the other important economic, social, and political problems of American life; it will only offer a starting point from which to confront them. The inadequacies of the political system, unemployment, inferior education, poor housing, and delinquency will still call for attention. In some of these matters the peculiarities of the Negroes' situation call for special treatment. But with reference to none of them is integration a meaningful mode of action; and the call for it which echoes from a different struggle on a different battleground only produces confusion.

Whatever may happen in the more distant future, Negroes will not merge into the rest of the population in the next few decades. Those who desire to eliminate every difference so that all Americans will more nearly resemble each other, those who imagine that there is a main stream into which every element in the society will be swept, are deceived about the character of the country in which they live. As long as common memories, experience, and interests make the Negroes a group, they will find it advantageous to organize and act as such. And the society will better be able to accommodate them as equals on those terms than it could under the pretense that integration could wipe out the past.

(285) References

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Negro Thought in America 1880-1915 (Ann Arbor, Mich., 1963). On the extremists, see Irving Howe, "New Styles in 'Leftism,'" *Dissent*, Vol. 12, No. 3 (Summer 1965), pp. 312, 314, 318 ff.

3. See, for example, *New York Times*' survey of whites' attitudes, September 21, 1964; Dean Harper, "Aftermath of a Long, Hot Summer," *Transaction*, Vol. 2, No. 5 (July-August 1965), pp. 9, 10.
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6. Walter White, *Rope & Faggot* (New York, 1929), pp. 20, 227, 230 ff.; James E. Cutler, *Lynch-Law* (New York, 1905), pp. 170 ff.; J. E. Coxe, "New Orleans Mafia Incident," *Louisiana Historical Quarterly*, Vol. 20, No. 4 (October 1937), pp. 1067 ff.; Theodore Saloutos, *Greeks in the United States* (Cambridge, Mass., 1964), pp. 62-69.
7. See Dwight L. Dumond, *Anti-Slavery* (Ann Arbor, Mich., 1961); Martin Duberman, *The Antislavery Vanguard* (Princeton, N. J., 1965), pp. 137 ff.; James M. McPherson, *The Struggle for Equality* (Princeton, N. J., 1964); Willie Lee Rose, *Rehearsal for Reconstruction* (Indianapolis, Ind., 1964).
8. See Frank Tannenbaum, *Slave and Citizen* (New York, 1946); Stanley M. Elkins, *Slavery* (Chicago, 1959).
9. C. Vann Woodward, *The Strange Career of Jim Crow* (New York, 1957) describes the process.
10. See T. J. Woofter, *Negro Problem in Cities* (New York, 1928), pp. 177 ff.; Howard Brotz, *The Black Jews of Harlem* (New York, 1964); John Daniels, *In Freedom's Birthplace* (Boston, 1914), pp. 133 ff.; W. E. B. Du Bois, *The Philadelphia Negro* (Philadelphia, 1899), pp. 197 ff., 389 ff.; St. Clair Drake, *Churches and Voluntary Associations in the Chicago* (286) *Negro Community* (Chicago, 1940); St. Clair Drake and Horace R. Cayton, *Black Metropolis* (New York, 1962), Vol. I, pp. 174 ff.
11. See, for example, Howard Zinn, *SNCC, The New Abolitionists* (Boston, 1964), pp. 216-241.
12. For example, Charles E. Silberman, *Crisis in Black and White* (New York, 1964).
13. A misleading impression is often the result of gross comparisons of selected Negro schools or school districts with a general white average. It is necessary to take account also of variables other than race that affect performance. An

analysis of achievement in Boston district high schools, for instance, shows that schools in certain white neighborhoods are as deficient as those in Negro neighborhoods (reported in *Boston Globe*, December 14, 1964, pp. 1, 13).

14. There is abundant evidence that significant improvement can come in the performance of Negroes in desegregated but racially unbalanced schools. The Banneker experiment in St. Louis, the experience of Washington, D. C., and the results in Louisville, Kentucky, point to the same conclusion. Of course, improvement can also come in balanced schools. However, the essential element is not balance, but the allocation of adequate educational resources to compensate for the disadvantaged situation of the Negro. See also Frank G. Dickey, "A Frontal Attack on Cultural Deprivation," *Phi Delta Kappan*, Vol. 45, No. 8 (May 1964), p. 398; *New York Times*, May 17, 1965. A good deal of the literature is summarized in T. F. Pettigrew, *A Profile of the Negro American* (Princeton, N. J., 1964), although the conclusions drawn are different.

15. Lewis G. Watts, et al., *The Middle-Income Negro Family Faces Urban Renewal* (Boston, 1964); Massachusetts Special Commission on Low-Income Housing, *Summary Report* (Boston, 1965), and *Final Report* (Boston, 1965), House Document 4040, p. 10.

16. See, for example, B. A. Pauw, *The Second Generation: A Study of the Family among the Urbanized Bantu in East London* (Cape Town, Union of South Africa, 1963); Raymond T. Smith, *The Negro Family in British Guiana* (London, 1956).

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"SLUMS AND SUBURBS"

by James Bryant Conant.*

A commentary on Schools in Metropolitan Areas

ACKNOWLEDGMENT

The present volume is based primarily on observations made during my study of education in the junior high school years, which was financed by a grant from the Carnegie Corporation of New York to the Educational Testing Service of Princeton, New Jersey. The results of that inquiry have been published elsewhere. Those who assisted me were Messrs. M. P. Gaffney, F. O. White, and E. A. Dunham. I am indebted to them for their contributions to this book, particularly to Mr. Dunham, who rewrote and rearranged a considerable portion of the first draft and collaborated closely with me in the preparation of the final manuscript.

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Introduction

This is a book of contrasts. I shall present a picture of two totally different kinds of neighborhoods and the public schools which serve them. I shall discuss city slums and wealthy suburbs. In the large metropolitan areas of New York, Philadelphia, Detroit, Chicago, and St. Louis, one has no difficulty in locating examples of both. In some cases twenty minutes' or half an hour's drive will enable a person to go from one to the other. A visit to the high school serving each community will open the eyes of a visitor to the complexities of American public education. Within the limitation imposed by the budget, the schools in the two totally different neighborhoods may be doing a good job. Yet their basic problems are in many respects quite unlike. And the differences spring from the differences in the nature of the families being served. One lesson to be drawn from visiting and contrasting a well-to-do suburb and a slum is all important for understanding American public education. *The lesson is that to a considerable degree what a school should do and can do is determined by the status and ambitions of the families being served.*

In the suburban high school from which 80 per cent or more of the graduates enter some sort of college, the most important problem from the parents' point of view is to ensure the admission of their children to prestige colleges; consequently there is great concern over good teaching of academic subjects. From the educator's point of view, however, the most vexing problem is to adjust the family's ambitions to the boy's or girl's abilities. In the city (2) slum, where as many as a half of the children drop out of school in grades 9, 10, and 11, the problems are almost the reverse of those facing the principal and guidance officer of the rich suburban school. The task with which the school people in the slum must struggle is, on the one hand, to prepare a student for getting and keeping a job as soon as he leaves school and, on the other hand, to encourage those who have academic talent to aim at a profession through higher education. The task

thus stated seems simple. In actual fact the difficulties are appalling. So appalling, indeed, that as I prepared to spell them out in my final report to the Carnegie Corporation, I decided to write a small book devoted largely to their consideration.

I have done so because I am convinced we are allowing social dynamite to accumulate in our large cities. I am not nearly so concerned about the plight of suburban parents whose offspring are having difficulty finding places in prestige colleges as I am about the plight of parents in the slums whose children either drop out or graduate from school without prospects of either further education or employment. In some slum neighborhoods I have no doubt that over a half of the boys between sixteen and twenty-one are out of school and out of work. Leaving aside human tragedies, I submit that a continuation of this situation is a menace to the social and political health of the large cities.

The improvement of slum conditions is only in part a question of improving education. But the role of the schools is of the utmost importance. As I hope to make clear in later pages, the school authorities ought to be given the responsibility for helping out-of-school youth between the ages of sixteen and twenty-one both to further their education and gain employment. Added responsibilities, however, require additional funds. Indeed the whole problem of financing public education in the large cities is a major national concern.

The contrast in money available to the schools in a (3) wealthy suburb and to the schools in a large city jolts one's notions of the meaning of equality of opportunity. The pedagogic tasks which confront the teachers in the slum schools are far more difficult than those which their colleagues in the wealthy suburbs face. Yet the expenditure per pupil in the wealthy suburban school is as high as $1,000 per year. The expenditure in a big city school is less than half that amount. An even more significant contrast is provided by looking at the school facilities and noting the size of the professional staff. In the suburb

there is likely to be a spacious modern school staffed by as many as 70 professionals per 1,000 pupils; in the slum one finds a crowded, often dilapidated and unattractive school staffed by 40 or fewer professionals per 1,000 pupils. The contrast challenges any complacency we may have about our method of financing public schools—even within a rich state like New York.

In the first three chapters of this volume I present a picture of the schools in the slums of the big cities that my staff and I have visited. Then follows a discussion of the very different problems facing the school authorities in some of the well-to-do suburbs in large metropolitan complexes. These areas include the ten largest cities in the nation—New York, Chicago, Los Angeles, Philadelphia, Detroit, Baltimore, Houston, Cleveland, Washington, and St. Louis. Within each area, one finds, of course, a broad spectrum of communities, and I am presenting the picture only of the extremes. In doing so I shall confine myself to public school problems, leaving aside the important fact that parochial schools in the large cities enroll a large fraction of the school population—a third or more in many cities.

My first report dealt with the comprehensive high school in small independent cities that were not part of a metropolitan complex. I classify as independent such cities as Elkhart, Indiana, Mansfield, Ohio, and Bakersfield, California, because in terms of their economic and social life (4) they are largely self-sufficient. With a population of 10,000 to 60,000, such a city generally has only one senior high school. It may or may not have a local community college. Because the city is an industrial center, the shop facilities in the high school will be used at night for an extensive apprentice program for high school graduates. Employment opportunities are, for the most part, local. A labor-management committee advises in regard to the various programs offered with federal Smith-Hughes funds, including the programs in grades 11 and 12 in the high school. The school board represents the entire community, and under favorable conditions the parents and

various civic groups feel that the schools are honestly run for the benefit of all. Indeed the citizens may feel great pride in their school, although, alas, this pride is all too often symbolized by the marching bands and the successful football and basketball teams.

In the small independent cities and the consolidated rural districts the widely comprehensive high school functions as an effective instrument of democracy. All the youth in the community are enrolled and there is a variety of elective programs. These are reasons why I chose to focus my attention on such schools in preparing my first report. Any school that enrolls most of the youth in the community can be said to be comprehensive. The degree of comprehensiveness turns on the variety of elective programs. The metropolitan areas of the country, the subject of the present volume, are almost without high schools that, in regard to the curriculum, are widely comprehensive. This is true whether one turns to a suburb or, with few exceptions, to a large central city. What do I mean by this statement? I mean that it is difficult for a youth in a metropolitan area to find high schools which offer a wide range of significant vocational programs—unless he goes to specialized technical or vocational high schools. In the suburbs there is relatively little demand for vocational education. (5) In the big city there are no labor-management advisory committees comparable to those characteristic of the small independent cities. Those that exist serve the vocational high schools; the employment area is too large, diverse, and complicated to be surveyed by any one committee.

In no school district within a great metropolitan area is there the sense of social and economic cohesion such as one finds in a small city. One has only to note the difference in the composition of the Rotary Club to see what I have in mind. The leading Rotarians in the small independent city usually live and have their principal business in the city. The community, while socially heterogeneous, is yet a viable social and economic unit. In a suburban town or city, however, the Rotary Club is often composed

of those who are not the richest or the most influential business and professional men in the community, because the business leaders who live in the suburbs work in the city and may belong to the Rotary Club in the city.

Perhaps some may think these differences trivial. I assure the reader that in terms of understanding public education they are not. They are significant both on their own account and as evidence as to the kinds of school districts which the public secondary schools must serve in the metropolitan areas. They affect the financing of the school, the composition of the school board, the relation of the parents to the school, and the chief problems of the elementary as well as the secondary school.

I estimate that a third of the high school population of the country resides in the large metropolitan areas, but by no means all this number attend the prosperous suburban schools. Nor do all in the large cities within these areas attend slum schools. Many high schools within each city are, except for the vocational programs, very much like the comprehensive schools which are described in *The American High School Today* and which enroll a third of the (6) high school population. Finally, a third of the high school population still attends high schools, generally in rural areas, that are too small to offer satisfactory education, particularly to the more able students. Though enrolling only a third of the student population, these schools represent 80 per cent of all public high schools in the United States. The number one problem in many states is elimination of small schools by further district consolidation. I should not like to attempt to match the seriousness of this problem on a national basis with the problem of the big city slum schools on which I am focusing attention in this book. They both present challenges to our American belief in the principle of equality of educational opportunity. Only through aroused public sentiment can these and related pressing problems be solved to the benefit of the public welfare of the United States.

(7)

CHAPTER I

City Slums and Negro Education

In this and the next two chapters I shall consider the special educational problems facing school boards, administrators, and teachers in the big central cities of our largest metropolitan areas—especially New York, Chicago, Detroit, Philadelphia, and St. Louis.

In each one of these cities one can find neighborhoods composed of various minority groups. Many of these are areas now designated as "culturally deprived" or "culturally different," but in my youth they would have been more simply designated as "slums." In particular one finds large Negro neighborhoods and often somewhat smaller areas made up entirely of Negro slums. The schools serving such neighborhoods must be visited in order for one to understand the nature of the difficult tasks which the teachers face.

The Status of the Negro

The slum areas of certain big Northern cities are today largely inhabited by Negroes who have recently moved from the South hoping to improve their lot. The economic changes in the South which have forced this migration are too well known to require elaboration. The Negro is being displaced as a farm laborer and, being unable because of discrimination to obtain other employment in the section where he was born, he becomes a migrant headed North. Between 1950 and 1960 the percentage of Negroes living (8) in the South dropped from 60 to 52 per cent. St. Louis is said to be the first stopping point for many who make the journey, though the school people in Chicago, Detroit, Philadelphia, Washington, and New York indicate that their problems with the recently arrived Negroes from the South are quite as great as those which confront their colleagues in St. Louis. New York State now has the largest Negro population of any state in the Union.

Since I am going to be completely frank about Negro

education in the largest cities, it may be well to take a few paragraphs to set forth my own interpretation of the distressing history of the Negro in the United States. At the outset I must make it plain that I approach the delicate and complex problem of interracé relations with the background of a one hundred per cent New Englander. My family tradition was that of the strong abolitionists. My mother, who remembered the Civil War, used to say that as a child she was brought up to think Negroes were if anything better than white people. It is as difficult for me to imagine myself in the position of the well-educated Southerner who in the 1850s argued for Negro slavery as it is for me to understand how intelligent Germans in the 1930s ardently supported Hitler. Yet the fact of the matter is that in the eighteenth and first half of the nineteenth centuries a great many citizens of the United States with high principles and broad education believed that "the peculiar institution of the South" was not only constitutionally justified but morally correct.

As I read the history of the United States, this republic was born with a congenital defect—Negro slavery. Or, if one prefers another metaphor, we started life under a curse from which we are not yet free. To be sure, slavery was recognized by at least some of the Founding Fathers as an abominable inheritance from the past. Many hoped the institution would disappear within a generation. We must remember, however, that even the author of the Declaration (9) of Independence, who advocated emancipation, also advocated the colonization of the freed Negro slave *outside* the United States. For otherwise, he said, "Deep-rooted prejudices entertained by the whites; ten thousand recollections by the blacks of the injuries they have sustained; new provocations; the real distinctions which nature has made; and many other circumstances, will divide us into parties, and produce convulsions, which will probably never end but in the extermination of the one or the other race." The idea of the Negro and the white living together peacefully on equal terms in a free society was literally inconceivable to Jef-

ferson. Yet after nearly two hundred years we are endeavoring to accomplish the building of just that type of society. We make a great mistake, I believe, if we fail to recognize the rough and weary road we have had to travel in our attempt as a free and independent people to remove the social consequence of the inherited curse of Negro slavery.

In spite of the acceptance of the principles of the Declaration of Independence, the makers of the Constitution wrote in the fugitive-slave provision as part of the compromise to satisfy the South, and as late as 1813 Congress explicitly referred to "citizens of the United States *or* persons of color, native of the United States," thus emphasizing that freed Negro slaves were not citizens. The Missouri Compromise, "bleeding" Kansas, the Dred Scott decision of the Supreme Court in 1857, the devastation of the Civil War, Lincoln's Emancipation Proclamation, the Thirteenth and Fourteenth Amendments—these are but a few of the historic markers of the truly frightful journey of a people believing in the novel doctrine of the American Revolution yet caught in the morass of Negro slavery. After the victory of the North, a vindictive Congressional majority tried first to solve with force a moral and sociological problem and then gave up. The people of the United States through their duly elected representatives in Congress (10) acquiesced for generations in the establishment of a tight caste system as a substitute for Negro slavery. A majority of the Supreme Court struck down what attempts were made to use the federal power to loosen the bonds of race prejudice and supported a doctrine of equal but separate facilities. As recently as 1932 a national commission which included a leading Negro educator spoke of improving the education of the Negro entirely in terms of obtaining federal support for separate schools. Equal educational facilities were demanded but not a word was written about desegregation.

As one reviews the events of the last hundred years and squarely faces a multitude of unpleasant facts today, the temptation to indulge in the fantasy of rewriting his-

tory arises. I cannot help regretting that the "black Republicans" of the 1860's by being so revengeful, precipitate, and corrupt in their attempts at reconstruction, prevented the moderate group from constructive acts favorable to the status of the Negro. If Congress had acted favorably on President Grant's recommendations of 1875 and the necessary number of states had agreed, an amendment to the Constitution would then and there have established a federal policy as to public education. Each state would have been required to maintain free public schools open to all irrespective of race, color, or creed, and, interestingly, no public funds at any level could have been used for the "benefit or aid, directly, or indirectly, of any religious sect or denomination. . . ." Even if the presence of federal troops had been necessary to get such a system of desegregated schools under way, the ultimate result would, to my mind, have justified this harsh reconstruction measure—"making it the duty of each of the several States to establish and forever maintain free public schools adequate to the education of all the children in the rudimentary branches within their respective limits." Today any state, by changing its constitution, could close all its (11) public schools—both segregated and integrated schools—and there is little that could be done at the federal level to prevent it.

As we now recognize so plainly, but so belatedly, a caste system finds its clearest manifestation in an educational system. By the same token, in the critical days when slavery had just vanished and caste lines were not yet established on a new basis, a system of free public schools for Negroes and whites together might have softened the caste lines even if a majority of pupils attended all-white or all-Negro schools. Above all, the existence of such schools, guaranteed by the power of the federal government, might have assured the eventual establishment of a corps of Negro and white teachers working together for the betterment of the recently liberated Negro slaves. To be sure, most of the white teachers would have come from the Northern states at first, and

normal schools for both races would have been required. The principle of an integrated teaching staff, however, would have been established. And once such a staff had been established in at least some of the former Confederate states, the whole problem of Negro education would have been viewed in a different light.

I might note parenthetically that the significance of the status of the Negro teacher is not always fully appreciated by those who discuss the Negro problem. Yet what differentiates Chicago from Atlanta, let us say, is not only that there are mixed schools as well as all-Negro schools in the Northern city, but that one finds a dedicated group of Negro and white teachers working together harmoniously on a set of difficult tasks. In a Southern city, the most one finds are formal conferences of the Negro and white teaching staffs; and often such conferences, quite common before the Supreme Court decision in 1954, are no longer held because of the state of public opinion.

The "might have beens" of the past are probably profitless to consider. Segregated schools and staffs were (12) established all through the South. The Constitution of the United States was not amended. For nearly a hundred years our ancestors—North and South, East and West—accepted, almost without protest, the transformation of the status of the Negro from that of a slave into that of a member of a lower, quite separate caste. The present situation is a consequence of a national policy, or rather the lack of a national education policy, which has persisted for generations. We now struggle with the consequences, and one of these is the situation in the Northern cities to which I am directing the attention of the reader.

I shall not discuss education in those many communities where segregation is still the policy of the school authorities. In all the cities to which I shall refer, the schools either have been desegregated for generations or were desegregated shortly after the decisions of the Supreme Court in 1954 and 1955.

Aptitude and Background

Before proceeding with this discussion, I must insert a few paragraphs to dispose of a common fallacy which one often hears privately even in the North. This is to the effect that it has been clearly established that a colored student on the average is inherently inferior to a white student. No such generalization has been established, and in my view the difficulties in obtaining evidence that would validate or, for that matter, clearly negate such a position are virtually insurmountable. However, it has been established beyond any reasonable doubt that community and family background play a large role in determining scholastic aptitude and school achievement. Anyone who thinks they do not simply has not visited widely among American schools.

Within such a city as Chicago, or Detroit, or New York, for example, the figures showing the distribution of scores on scholastic aptitude tests in different neighborhoods (13) are most revealing. In one of these cities the average score of the eighth-grade pupils in a school in a relatively well-to-do, stable residential section is 123; in another neighborhood of about the same size but composed entirely of people of low socio-economic status, the average score is only 76. The average score city-wide is 100. It is true that in the section that shows up so poorly in these scholastic aptitude tests there are many, many Negroes. But there is no way of deciding whether the low score is related to the color of the pupils' skins or the low socio-economic condition of the entire group.

A very important fact not to be overlooked is that the comparison of average scores leaves out of account the overlap of scores that, as far as I know, is found whenever such comparisons are made. There are always some Negoes who score better than most whites and some whites who score lower than most Negroes. Important, too, is the fact that such a test correlates highly with reading ability. Children who for one reason or another have learned to read will do better on this kind of test than children who have not learned. In the suburban school practically all the children read well; in the slum school few do.

In view of the influence of cultural background, a word is in order on the validity of the commonly used "intelligence" or scholastic aptitude tests. In recent years, the paper-and-pencil tests measuring intelligence or scholastic aptitude have often been attacked because they are considered to be unfair to underprivileged children. Indeed the whole concept of intelligence tests is distasteful to some Negro educators whom I have met, not only because the test which is commonly used to measure I.Q.s reflects the cultural level of the family, but also because the whole idea of an intelligence quotient is considered too deterministic. To assign an I.Q. to a child at an early age is to brand the child. On the last point, I think one must admit that, as originally developed and used by many educators (14) in the 1920s and 1930s, intelligence tests were thought of as measuring the inherent or genetic qualities of the individual. The evidence at first available seemed to indicate that the chances of a single individual's I.Q. changing over the years were slight. Today, however, when we tend to think of paper-and-pencil intelligence tests, at least in the higher grades, as measuring a type of scholastic aptitude, we are well aware that we are measuring an aptitude which in part has been developed in the school. The difference between an I.Q. test and a good achievement test is one of degree not kind. Understood in this sense and with evidence accumulating that an individual's aptitude score may change during his school years, there is nothing deterministic about the use of the various forms of intelligence or aptitude tests which are on the market. If they are understood only as giving a prediction of *probability* of academic success in subsequent schoolwork, they are no more and no less influenced by home or other environmental factors than are the marks for schoolwork given by a conscientious teacher.

In this regard, one wonders at the purpose that would be served by establishing so-called culture-free tests which, it is asserted, would discount the cultural bias in the group paper-and-pencil intelligence tests. Whether

such a test can be devised is itself a question. Granting that one could have a test that showed equal results with children of widely divergent socio-economic backgrounds, the results would serve little useful purpose, since schools exist in a society that does have cultural biases. As a knowledgeable person in testing has said, "If a child does poorly on an aptitude test because he comes from the wrong side of the tracks, it isn't the test that is being 'unfair,' it is the hard facts of social circumstance that are unfair. Anyone who is seriously interested in improving the lot of the culturally underprivileged should direct his attention not to changing the tests—which would accomplish literally nothing—but to improving (15) the quality of educational opportunity for all children."

Whenever aptitude test scores are cited, it must be borne in mind that their *only* valid use is to make rough predictions of future success in academic work in school. On this basis, most of the pupils in the Negro slum school will have a very difficult time with their future schooling. This is not to say that no effort should be made to upgrade both the aspirations and achievements of slum children. Quite the contrary; good teachers are never defeatists. Dedicated school people in city slums in every city have the goal in mind to raise the sights, ambitions, and academic skills of children with low scores on tests of scholastic aptitude. They have this goal precisely because they realize that even though the betting odds are against their success, there is always a chance that at least some boys and girls with hopeless school backgrounds and low I.Q. scores will show dramatic progress. This happens time and again—but more of these success stories in later chapters. At this point, let me say that although it is my belief that students should take as wide a program of academic studies as they can handle, one must not be deluded into thinking that miracles can be worked with any large numbers of children. Aptitude test scores, marks of conscientious teachers, achievement test results—these reliable predictors of academic success indicate the enormity of the task of teachers in slum schools.

In considering the relative abilities of whites and Negroes, let us examine the situation in an *all-white* slum in a city of considerable size. Perhaps the greatest handicap to good school work is the high mobility of the population in the neighborhood. It is not uncommon in such a school to have a turnover of the entire enrollment in one school year. A careful study of a group of children in grade 4 of one such school showed that their average achievement level was a full year below their grade placement—a typical situation in any slum area.

(16) What the teachers in this school have to contend with is shown by a report from the principal, who writes:

"When a residential area composed of large, old homes formerly occupied by owners and single family groups changes economically and socially, conditions of general deterioration begin. Absentee owners rent the property by single rooms or small so-called apartments of two or three rooms to large families. . . . Such conditions attract transients (who either cannot or will not qualify for supervised low income housing), the unemployed, the unskilled and unschooled, and the distressed families whose breadwinners have either just been committed to prisons or mental institutions or who have but recently been released from such. The only possession most of these families have is children. . . In such an environment all forms of evil flourish—the peddling of dope, drunkenness, disease, accidents, truancies, physical, mental and moral handicaps, sex perversions involving children. . . .

"The parents of at least one-third of the children are either in penal institutions, are on probation, or have prison records. At least 100 children are on probation to the Juvenile Court. There has not been a day since I've been at the school that there has not been one or more children in detention at the Juvenile Court. . . .

"Unless a school is able to educate its children so they may become competent and responsible citizens its work is a temporary stopgap that relieves immediate suffering only. Although the school is the only organization that has

instruction as its primary responsibility, when a noble hearted teacher faces a barefoot, hungry, sick, distressed child, the result is an endless chain of efforts to relieve such a child.

"We realize that little or nothing can be done for or with the parents of the children who face such serious problems in their homes. These problems directly affect the child's health, attendance, emotional and personal adjustment, his learning and his progress (or lack of it) in (17) every respect. In all probability at least one-half of our children will be school dropouts. In our opinion the children need, desperately, for desirable development, in addition to good schools—good homes, churches and communities."

I am quoting from an official report which, in acknowledging the generally low achievement of the white children in this school, makes the interesting statement that "There is no reason to believe that these students as a group are inherently or genetically less capable than average students, but apparently because of some types of experiences in their lives they have been unable to develop their intellectual skills." The belief expressed in the first part of this sentence can hardly be based on anything firmer than an assumption as to the genetic uniformity of white children whose ancestors have for several generations lived in the United States. Such an assumption, of course, leaves out of account the possibility of a selective process occurring over the generations as some tended to move to one type of occupation and settle in one type of community. However, since I see no way of investigating the role of selective migration, I would be inclined to let the assumption stand unchallenged. *Only I would argue strongly that to date we have no evidence to indicate that the assumption should not be broadened to include* both *white and Negro students.* For all the contrary evidence, namely the poor work in school and low scores on tests made by Negroes, is based to a large degree on the performance of children in what are essentially slum conditions.

In short, until we have a great deal more data about test scores and school records, especially with respect to large numbers of Negro children from stable high-income communities, I for one would reserve judgment as to the answer to the question whether there is a correlation between race and scholastic aptitude. And until the evidence is available, I suggest the only assumption to use as a working hypothesis is that there is *no* genetic or inherent difference (18) as far as aptitude for schoolwork is concerned between large numbers of Negroes in the United States and large numbers of other children.

Elementary Schools in Negro Slums

With this background sketched in, I can now take up the educational problems in the Negro slums of certain of our largest cities. I wish that I could do more than take them up. What I should like to do is to create in the reader's mind a feeling of anxiety and concern. For without being an alarmist, I must say that when one considers the total situation that has been developing in the Negro city slums since World War II, one has reason to worry about the future. The building up of a mass of unemployed and frustrated Negro youth in congested areas of a city is a social phenomenon that may be compared to the piling up of inflammable material in an empty building in a city block. Potentialities for trouble—indeed possibilities of disaster—are surely there.

Let me describe a slum that might be in any one of several of the large cities I have visited. The inhabitants are all Negroes and with few exceptions have entered the city from a state in the deep South anytime within the last month to the last three years. Often the composition of a school grade in such an area will alter so rapidly that a teacher will find at the end of a school year that she is teaching but few pupils who started with her in the fall. I recall the principal of one school stating that a teacher absent more than one week will have difficulty recognizing her class when she returns. This comes about because mothers move with their offspring from one rented room to another from month to month and in so doing often

go from one elementary school district to another; I am told that resident tenements look more like transient hotels. I write "mothers" advisedly, since in one neighborhood, (19) by no means the worst I have seen, a questionnaire sent out by the school authorities indicated that about a third of the pupils came from family units (one hesitates to use the word "home") which had no father, stepfather, or male guardian. This particular section was by no means homogeneous, of course. For while many moved about from room to room, a quarter of the parents reported that they owned their homes. Only 10 per cent of the parents had graduated from high school and only 33 per cent had completed the elementary school. Contrast the situation in which a third of the parents have completed elementary school with that in a high-income suburb where as many as 90 per cent of the parents have bachelor's degrees, if not graduate degrees from a university.

These Negro slums seem to vary considerably with respect to the social mores. In some there are very bad gangs with gang warfare among the boys. There are also vicious fights outside of school between Negro girls. The condition in one such neighborhood was summed up to one of my staff by a principal of a junior high school who said even he was shocked by the answers to a questionnaire to the girls which asked what was their biggest problem. The majority replied to the effect that their biggest problem was getting from the street into their apartment without being molested in the hallway of the tenement. He went on to say that the area had a set of social customs of its own. The women, on the whole, work and earn fairly good wages, but the male Negro often earns less than the woman and would rather not work at all than to be in this situation. As a consequence, the streets are full of unemployed men who hang around and prey on the girls. The women are the centers of the family and as a rule are extremely loyal to the children. The men, on the other hand, are floaters, and many children have no idea who their father is. Similar reports from principals and teachers can be heard by the attentive and sympathetic

visitor to the Negro slums of (20) any one of several cities. Racial discrimination on the part of employers and labor unions is certainly one factor which leads to the existence of so many male Negro floaters. What is terrifying is that the number of male *youth* in this category is increasing almost daily.

I have so far referred only to white and Negro slums. A few words are necessary to point out that in some cities, New York in particular, there are slum areas inhabited by recent arrivals from Puerto Rico. In these sections, the problems are similar to those I have been describing but complicated by the difference in language. Unlike the American Negro from the South, these recent arrivals bring with them a set of social mores closely associated with their own methods of communication. At the same time, they often, if not always, come with children whose schooling has been bad. Clearly the task of educating these Puerto Rican children involves both a reading and a foreign language problem. These problems are so special I shall not attempt to discuss them here. One hardly needs to point out that their existence adds one more complication to the tasks confronting the administrators and teachers in the New York City schools. Add to these problems the possibilities of interracial hostility and gang warfare between Negroes and Puerto Ricans and the resentment of both toward the whites, and one has a veritable witches' brew which comes to boil with unsavory violence in certain schools in certain areas—particularly in the junior high school years. The amazing feature of the whole situation is that pupils make any progress in schools in some areas of the city.

One needs only to visit such a school to be convinced that the nature of the community largely determines what goes on in the school. Therefore to attempt to divorce the school from the community is to engage in unrealistic thinking, which might lead to policies that could wreck havoc with the school and the lives of children. The community and the school are inseparable. For example, I have (21) walked through school corridors in slum areas and, looking into classrooms, have seen children

asleep with their heads on their hands. Is this situation the result of poor teachers without either disciplinary control or teaching ability? No, the children asleep at their desks have been up all night with no place to sleep or else have been subject to incredibly violent family fights and horrors through the night. Checking into one case, a principal told one of my staff that after climbing six flights of a tenement he found the boy's home—one filthy room with a bed, a light bulb, and a sink. In the room lived the boy's mother and her four children. I might add that it is not unusual for teachers in these schools to take home with them children with no place to go at night. The social attitudes found in this kind of slum neighborhood are bound to affect the atmosphere of the school. As one Negro teacher said to me, "We do quite well with these children in the lower grades. Each of us is, for the few hours of the school day, an acceptable substitute for the mother. But when they reach about 10, 11, or 12 years of age, we lose them. At that time the 'street' takes over. In terms of schoolwork, progress ceases; indeed many pupils begin to go backward in their studies!"

I ask the readers of this volume, many of whom live in wealthy suburbs, to ponder the contrast between the lives and the education of their children and the lives and education of the boys and girls in the neighborhoods I have been describing. It is after visits to schools like these that I grow impatient with both critics and defenders of public education who ignore the realities of school situations to engage in fruitless debate about educational philosophy, purposes, and the like. These situations call for action, not hair-splitting arguments.

Those who are deeply concerned with the education of the children in these slum areas are not waiting for others to change the social setting in which the schools operate. They are tackling the problem of getting the boys (22) and girls from the poorest families to learn to read and write and do arithmetic. Foreign languages in grade 7 or algebra in grade 8 (recommendations in my junior high school report) have little place in a school in which half the

pupils in that grade read at the fourth grade level or below. Homework has little relevance in a situation where home is a filthy, noisy tenement. Discipline, of course, is a problem. Many educators would doubtless be shocked by the practice of on-the-spot demotion of one full academic year, with no questions asked, for all participants in fights. In one junior high school I know of, a very able principal found so intolerable a situation that he established that very rule. As a consequence, there are fewer fights in his school among the boys, many of whom at one time or another have been in trouble with the police. In this school and in many others like it one finds the boys wearing ties and jackets to school, if not their one Sunday suit. When spoken to in the classroom, they rise to recite. Passing time between classes may be as short as one minute in order to preserve order in the halls. The school attempts to bring some kind of order to otherwise chaotic lives. And what is important, this formal atmosphere, at least in one school I know of, appears to work. School spirit has developed, and efforts are now being made to enlist the interest of the parents in the education of their children, who must stay in school till they are sixteen and whom the school will try to keep in school till graduation to prevent unemployed, out-of-school youth from roaming the streets.

In contrast to what one hears about "blackboard jungles," I think I am fairly safe in saying that the outward manifestations of discipline, order, and formal dress are found to a greater degree in the well-run slum schools of a city than they are in the wealthier sections of the same city. The contrast is especially noticeable between city slum schools and wealthy suburban schools, where informality in dress, deportment, and classroom procedure is the rule. (23) I doubt that many suburban parents would stand for the regimentation and formal discipline meted out in many slum schools. It is not accidental that that part of the progressive movement in education which rebelled against formalism and authoritarianism found root in the suburban and private schools.

I should like to record at this point my impression of what my colleagues and I have seen in slum sections of big cities. Almost without exception we have seen white and Negro teachers and administrators struggling tenaciously and bravely against the adverse influences of the home and the street. As one of my associates who had spent the best years of his life as a principal of a suburban public high school put it, "I visited junior high schools in New York City in some of the worst areas. I expected to find blackboard jungles; instead I found schools with high morale, tight discipline, imaginative principals and teachers. My visits to New York City junior high schools," he went on to say, "have provided some of the most interesting and exciting experiences I have had. In bad neighborhoods with children from hopeless backgrounds these schools are really doing a magnificent job." My own visits were largely confined to similar schools in Chicago, Detroit, and St. Louis, and my admiration for what is being done in those cities is equal to that of my colleague for what he saw in New York City.

The Importance of the Home

In the slum school, the development of reading skill is obviously of first importance. The earlier the slow readers are spotted and remedial measures instituted, the better. Indeed, the same rule applies as well to any school, but in the heavily college-oriented suburb, the number of slow readers is relatively small and teaching children to read by no means looms so large and difficult a problem as it does in (24) the slums. Some commentators have failed to recognize the relation of the reading problem to the socio-economic and cultural level of the home. Evidence on this point is found in the large cities. Essentially the same methods are used in all the elementary schools in a city, and yet the average grade level of reading in the sixth grade, for example, may vary as much as two grades from one school to another. Concern with improving the reading of the pupils, particularly the slow reader, must continue well beyond the elementary school.

Different administrators and teachers in various cities are tackling the problem of teaching reading in somewhat different ways. My associates and I were very favorably impressed by the effort that was being made in many of the cities we visited. Just how far up the reading scale one can hope to bring the majority of pupils in a slum neighborhood is an open question. The factors working against all forms of intellectual effort are powerful negative influences to overcome. Since the degree of influence of these negative factors varies from child to child even in the same neighborhood, and the neighborhood's social climate changes from year to year, sometimes from month to month, it would be very difficult to obtain significant figures if an analysis of the social factors were attempted. One can only report that in spite of the Herculean efforts which are being made, there are many ninth-grade students in certain large city schools—in some as many as a half—who are reading at a sixth-grade level or lower. It must be remembered, however, that because of the high family mobility very few of these youth have had the advantage of the special attention given to reading in the lower grades in the same city.

In one school I visited, the teachers themselves, mostly Negroes, felt that the only way to improve the reading of the children in the first three or four grades was to do something with their mothers. If the head of the family unit (25) could be located and brought into communication with the school, attempts were made to stimulate an interest in newspapers, magazines, and possibly even books. One of the troubles, the teachers said, is that when the children leave the school they never see anyone read anything—not even newspapers. "If we could change the family attitude toward reading, we could accomplish much." With this statement one must heartily agree and likewise agree that even a slight change, which was all that was expected, would probably be reflected in the reading ability of the children.

In other all-Negro schools, this point was made again and again. Therefore many such schools use social workers

or visiting teachers to keep the parent or parents in touch with the school. This is not always an easy task, for the almost illiterate parent may be frightened of anyone officially connected with education. But if the parents can be induced to adopt a positive attitude toward the school, a first step has been taken. If the reading of some sort of printed material can be started, the way is open for the more usual forms of adult education courses. It may be that only by a greatly increased expenditure of funds on adult education can the present blocks to children's educational progress be removed in the most depressed areas of the large cities. Trials of new procedures and imaginative approaches to a complex social and educational problem are certainly in order.

In connection with the difficult task of teaching reading, it is well worth pointing out that without the development of modern testing what is now being accomplished would be quite impossible. I am convinced that fifty years ago in all communities, and even fifteen years ago in many schools, the slow reader was not identified or, if identified, was just ignored. Today in all the larger school systems, reading tests are given in most grades, and the reading level of each pupil and the average of each grade are carefully recorded. This procedure has proved its value. Unlike the (26) I.Q. scores, it is clear what the reading level tests try to measure. Furthermore there is a mass of evidence that, by remedial work, a child may improve his standing on such a test. What is of prime significance in all the larger schools is that remedial measures *are* taken to improve the reading level of those who have some ability but are far behind the average for their age.

At the risk of being unduly repetitious, I must emphasize that for the last few pages I have been discussing, for the most part, Negro *slums*. To suppose that all Negroes live in such neighborhoods, even in the large cities, would be to make a totally unwarranted inference from what I have reported. A trained sociologist would perhaps be able to characterize every block of city tenements in terms of a series of concepts developed in recent years by his col-

leagues. Presumably to do so would require an extensive survey. As a first approximation to the data which would be thus obtained, one can use the information supplied by the principals of the public schools serving the different, and usually adjacent, Negro neighborhoods. Particularly significant are the readings levels, the scholastic aptitudes and achievements in grades 7 and 8, and the dropout rate after grade 8. Using such criteria, I know that one will find gradations of Negro neighborhoods in a number of the large cities, just as one finds a similar gradation in white neighborhoods—running from slums to well-to-do residential sections. Furthermore, in some sections of some cities, at least the upper grades will be mixed white and Negro, reflecting of course a mixture of races in the larger geographic area from which the upper grades draw their pupils. In such schools, I am told, it is usual to find far more whites than Negroes in the group that scores high on aptitude and achievement tests. At first sight such facts might be taken as evidence as to the inherent superiority of the white children for academic work, but anyone who has observed even casually the situation of the Negro in the large (27) cities and who knows the influence of the family on the school performance of the children will see the fallacy of any such conclusion. The position of the family in the *total* community, in this case the entire city, and the past performance of the friends and relatives of the family in getting a job and obtaining recognition enormously affect the attitude of the parents toward intellectual tasks and the desires and ambitions of the children.

De Facto Segregation

In concluding this chapter, I should like to turn to a thorny subject of great concern to those interested in improving Negro education. This is the question of whether or not *de facto* segregation, as some like to call it, is detrimental to the education of the Negro. Closely related is a second question; namely, should the school authorities endeavor to move Negro children into purely white schools in order to have as many mixed schools as possible? The

issue is a very real one, and in a sense it is primarily political. At this point I must make reference to the Supreme Court decisions of 1954 and 1955 because of a tendency to regard them not only as the law of the land but as a sacred text on education. Clearly even a unanimous opinion of the Supreme Court fails to determine educational policy except within the framework set by the issues before the Court—in this case, the "segregation of children in public schools solely on the basis of race." It is necessary to point out this obvious fact, for I have heard the statment made that because the Supreme Court expressed the opinion that "Separate educational facilities are inherently unequal," all completely Negro schools are morally wrong and that there is essentially no difference between *de jure* segregation still found in almost all Southern communities and what some call *de facto* segregation in portions of the large (28) Northern cities. The point is important and deserves discussion.

If one turns to the Supreme Court decision in the case of *Brown et al. v. Board of Education of Topeka* [347 U.S. 483 (1954)], one finds the sentence I have just quoted about separate educational facilities. Taken out of context, the conclusion might be drawn that the justices declared separate educational facilities *for whatever reason provided* are morally wrong and if supported by tax funds are illegal. Yet on reading carefully the whole opinion, I think the key sentence is the question defined by the Court: "Does segregation of children in public schools *solely* on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does." I have italicized the word "solely," as I presume to think it is the essential word. The justices appear to have expressed no view as to whether the pupils in a completely Negro school are deprived of equal educational opportunity if they are not assigned solely because of their race. In short, if one group of children is separated from another group because of the neighborhood in which they live, the fact of this separation is, of and by itself, no evidence of an

inequality in education. Whether in fact the facilities and instruction are equal in a 100 per cent white school, a mixed school, and a 100 per cent Negro school in a large city is to be determined by examining the schools, not by appeal to phrases such as *de facto* segregation with the implication that it is to be condemned by all right-thinking people who condemn *de jure* segregation.

In some cities, political leaders have attempted to put pressure on the school authorities to have Negro children attend essentially white schools. In my judgment the cities in which the authorities have yielded to this pressure are on the wrong track. Those which have not done so, like (29) Chicago, are more likely to make progress in improving Negro education. It is my belief that satisfactory education can be provided in an all-Negro school through the expenditure of more money for needed staff and facilities. Moreover, I believe that any sense of inferiority among the pupils caused by the absence of white children can be largely if not wholly eliminated in two ways: first, in all cities there will be at least some schools that are in fact mixed because of the nature of the neighborhood they serve; second, throughout the city there ought to be an integrated staff of white and Negro teachers and administrators.

To insist that such solutions cannot be acceptable and to assume instead that the schooling of Negroes can be satisfactory only if in each schoolroom there are present some white children is to take an extremely defeatist view of Negro education in the large cities. The proposal to move any appreciable number of white children by bus into what are now Negro schools or to move all the Negro children in a Negro neighborhood into what are now white schools presents a transportation problem that is quite insoluble. An examination of the geography of the Negro and white sections of the large cities makes this evident. If some children are to be transported, the question arises which children and how many. I am not discussing here what seems to me to be a separate question; namely, the crossing of school attendance lines when waves of population movement create overcrowded conditions in one at-

tendance area and vacancies in another. Nor am I justifying the gerrymandering of attendance lines; such a procedure amounts to separating pupils *solely* on the basis of race.

At the elementary school level the issue seems clear. To send young children day after day to distant schools by bus seems out of the question. It must be remembered that unless by the accident of population migration there are empty seats in the predominantly white schools, white children (30) would have to be transported to Negro areas in order to free the necessary space. Clearly a complicated arrangement for moving large groups of young children around a city for the sake of mixing all the elementary schools is hardly worth discussing. At the high school level, the youth are certainly old enough to commute; one complication present in the elementary schools has disappeared. Still, a great network of transportation would have to be provided in a number of cities if the goal were to have every high school a mixed school. I have already noted the problem of determining the proper degree of admixture of white and Negro children. The more one considers the matter, the more one is convinced that children should not be manipulated for the purpose of seating Negro children in white schools or vice versa. To my mind, the city school superintendent is right who said he was in the education business and should not become involved in attempts to correct the consequences of voluntary segregated housing.

I know the argument is being made that crossing attendance lines should be permissive and without cost to the city and that the refusal of this right is a psychological blow to the pride of the members of the Negro race. But the reason for demanding such a privilege is the allegation that education in an all-Negro school to which pupils are not assigned *solely* on account of race is inherently inferior. Once this allegation is granted, the foundation for improving Negro education in the large cities is undermined. Since I believe the evidence indicates that it is the socio-economic situation, not the color of the children, which

makes the Negro slum schools so difficult, the real issue is not racial integration but socio-economic integration.

Put another way, if there is no inherent difference in potential ability, and if educational opportunity is equal, the poor achievement of the children in both the Negro and white slums which I described earlier may be ascribed to their depressing cultural and socio-economic backgrounds. (31) One might argue, therefore, that *all* slum schools ought to be integrated with schools in economically favored areas. If the body politic through its school board once sets out on a course of neighborhood desegregation, a good case can be made for transporting *white* children from slum schools to schools in high income residential districts and vice versa.

Much as I admire the comprehensive high school in the town with one high school and see it as an instrument of democracy, it seems impossible for school authorities in a large city to create artificially a series of such schools. If a policy were to be adopted that, as an ideal, every neighborhood school should have a widely heterogeneous school population represented by all socio-economic backgrounds, school administrators would be forced to move children about as though they were pawns on a chessboard.

If good schools can exist only with a heterogeneous student population, one could argue just as logically that state authorities should adjust all school district lines so that the high-income suburban high school would include students from a neighboring depressed area. Another impossible proposal. Antithetical to our free society as I believe *de jure* segregation to be, I think it would be far better for those who are agitating for the deliberate mixing of children to accept *de facto* segregated schools as a consequence of a present housing situation and to work for the improvement of slum schools whether Negro or white. The problems in these schools are far more difficult to solve than in other schools, larger and better staffs should be available, more money is required. It is my firm belief that actions based on the premises I have outlined are in the best interests of the Negro and of the nation. Through

the existence of at least some mixed schools, integrated teaching staffs, and increased expenditures in slum schools, I suggest that the education of Negroes in Northern cities can be made satisfactory and (32) their status improved. Another necessary step in upgrading the status of the Negro in the North is to take drastic measures to eliminate racial discrimination by labor unions and employers. This last observation leads me to a consideration of employment and secondary education in the large cities, which is the subject of the next chapter.

ARTICLE BY JIM HAMPTON FROM THE NATIONAL OBSERVER.

Dramatic Plans, Dramatic Protests in Chicago

HELLO TO BUSES, GOOD-BY TO NEIGHBORHOOD SCHOOLS

Chicago.

There's a storm blowing again through the schools of Chicago, where public education is spelled t-u-r-m-o-i-l.

The Chicago school system, second largest and among the most segregated in the nation, is already 54 per cent Negro. The percentage creeps up as Negroes displace whites from the city at the rate of 2.9 blocks a week. Unless something is done soon, demographers say, integration will be almost impossible by 1980.

The Board of Education and its new superintendent, Dr. James F. Redmond, are trying to do something. The board has adopted "in principle" a far-reaching plan that would eventually replace the neighborhood school with educational parks accommodating 20,000 students each.

It would also set up "magnet schools" in fringe residential areas; they would have superb facilities, top-flight teachers, and programs available nowhere else—all in an effort to slow the white movement to the suburbs and to give Negroes the quality education they are not getting now.

Busing Proposed

Last week the board got a taste of what its long-range plans may be up against. The board suggested busing Negro students from South Side schools to white neighborhood schools, and busing a few whites the other way; another 573 Negroes would have been bused from overcrowded West Side schools to predominantly white classrooms.

White parents went to court, failed to secure an injunction against the board, and then swamped the board's offices at 228 North LaSalle St. About 2,000 showed up, carrying placards like "Redmond, are you superintendent of education or transportation?" and "Let's bus Redmond out." The board postponed action on the busing plan for at least a month, and Mayor Richard J. Daley said the plan should be scrapped unless a majority of the parents in the affected areas endorse it.

The busing protest developed only hours after the board had staved off a threatened strike by its 23,000 teachers. The Chicago Teachers Union ratified a new contract that provides $1,000 pay raises by next fall and will cost $31,000,000 over the next two years. But now the city's full-time substitute teachers, who make up nearly 30 per cent of the total, are threatening to strike; they don't like the new contract's teacher-certification provisions.

These day-to-day crises, disruptive as they are, are insignificant beside the overwhelming difficulties that lie ahead for Chicago's schools. By changing the figures to suit the city, the names of many American cities would fit the same circumstances.

A Dramatic Increase

Like other big American cities, Chicago has been experiencing major growth in its Negro population. Real Estate Research Corp. (RERC), in projections made for the school board here, predicts that Chicago will be 42.9 per cent Negro in 1980, a dramatic rise from the 28.4 per cent in 1965.

The causes are familiar enough. Since World War II whites have flocked to suburbs, and Negroes and other minority groups have flocked to central cities. Between 1960 and 1965, the Census Bureau says, 96 per cent of all U. S. suburban growth was white; 87 per cent of all Negro population growth happened in central cities.

"If such growth continues to be concentrated within the city of Chicago," the RERC report says, "long-range stability of racial balance is impossible. For a city with a relatively fixed total population, capacity cannot have a stable racial balance if one group keeps growing rapidly; the other group *must* decline in size."

As long as children attend neighborhood schools, the racial balance of the neighborhood will determine the balance in the schools. In Chicago, *de facto* school segregation is exacerbated by extremely segregated housing patterns.

A Cross-Shaped Area

The city's Negro ghetto runs west, south, and north out of the Loop, in downtown Chicago. It is roughly cross-shaped, and the corners of the cross are what Stephen Rose, editor of Renewal magazine here, calls "two big nice, solid bungalow-type, Catholic, working-class neighborhoods. Along the lake [Lake Michigan] you have the well-to-do, high-rise, white business culture. When you talk about schools, you're not talking about the people who live along the lake shore; you're talking about these Catholic neighborhoods and these ghettos."

The Roman Catholic Archdiocese of Chicago is the largest in the world. Its schools have more than 225,000

students, 27.9 per cent of the city's total. But only 10.3 per cent of the parochial schools' students are Negroes, and the proportion is holding steady. The "split" between public and parochial schools will remain at its present level, RERC projects, with the public schools getting 57 per cent of all white students and 93 per cent of the Negroes.

Obviously the burden falls on the public schools, which have set two goals for themselves. First, they hope to upgrade ghetto education by busing and by enticing more senior teachers into the core city's schools; both efforts have fizzled so far. Second, they hope to stem the white emigration by stabilizing, through magnet schools, fringe neighborhoods that will become all-Negro without extraordinary inducements to keep white families living there.

The Redmond Plan

Enter the Redmond Plan. This is the name given the document containing recommendations of several consultants that the board hired to suggest ways of increasing integration and improving ghetto schools. The study was made after the U. S. Office of Education told Chicago officials that they had to do something about their schools' *de facto* segregation.

At this point the plan is little more than that. The Board of Education accepted its recommendations in principle, and another consultant—Dr. Donald Leu of Michigan State University—is now studying the feasibility of the educational-parks idea. He said recently that the concept is the only workable prospect for salvaging Chicago's public schools.

Educational parks, as the Redmond Plan contends, may well be the only way to achieve integration in Chicago. "First," the plan says, "the park would draw from a much larger attendance area than a single school and thus include the full spectrum of ethnic, racial, economic, and social groups. Second, and related, minor-

ity students could no longer be viewed as the advance guard of a movement menacing the integrated neighborhoods, for the school would not be located by neighborhoods. . . ."

Instead, the parks would be scattered around the city, near arterial streets. Almost all students would be bused to school. The plan recommends 8 to 10 sites along Lake Michigan and 15 to 20 others elsewhere around the city, noting that "the effect upon integration of the areas chosen must be considered as crucial."

'A 30-Year Undertaking'

The parks idea "would be lunacy if conceived of as less than a 30-year undertaking," the plan says. It recommends building the first five over the next 8 to 10 years, adding parks at a one-a-year clip thereafter. "The addition of an average of one park per year serving 20,000 should permit the retirement from service of an average of 10 or more elementary schools and more than one high school per year," it adds, or more than 300 schools by the year 2000.

The plan continues: "All of this assumes a system of student assignment that will produce a close approximation of the over-all racial makeup of the community. Any such system must face up to the kinds of questions raised by past experience with assignment based on the student's own choice. Even if a shift to the park concept is justifiable on grounds unrelated to integration, it would be absurd to conclude 30 years of effort with the school system still segregated.

"With the advancement in transportation techniques that can be anticipated, the element of hardship for students assigned to more distant schools becomes of little consequence. . . . There would, in effect, be no neighborhood school to choose, and the difference between a 15-minute and a 25-minute ride is not so substantial as to constitute an unreasonable burden. The substantial objections to involuntary assignment outside the home neighborhood that exist under the present system of site selection tend to evaporate under the park concept."

Whatever its other qualities—and they are being hotly debated around the country—the educational park is expensive. Dr. Leu estimates that each park would cost Chicago $55,000,000; that would make a total cost of $1,375,000,000 for 25 parks, a stiff price even for an affluent school system.

Affluent, Chicago schools aren't. The system's 580 schools this year are operating on a $380,000,000 appropriation, or $647 for each of their 587,000 pupils; per-capita outlays in some suburban areas are $1,000 or more. James Moffat, one of Dr. Redmond's assistants, says the system's building needs already are estimated at $1.2 billion over the next 10 years. "Where are we going to get the money?" he asks. "Where is it to come from?"

Says Stephen Rose, editor of Renewal, a high-quality magazine focusing on urban problems: "This is a decent plan, but it comes 10 years too late. The obvious drawback—and this applies to the whole metropolitan problem—is that there's no darn money built into it. And the fact is that as long as the Vietnam War continues we are not going to have any money to spend on urban affairs."

Quality at Issue

Some observers contend that the primary problem in Chicago's schools is quality of education, not integration. They doubt whether integration is even possible, noting that the schools would be 54 per cent Negro even if each classroom had the white-Negro ratios of the system as a whole.

"We understand that in order to have completely integrated schools you would have to move 92 out of every 100 families in Chicago," says Ed Riddick, a Negro official of the Church Federation of Greater Chicago. While Negroes do not expect this to happen, he adds, they do see quality education as possible.

"Our initial comments about the magnet schools were that they were very promising as attempts to develop meaningful integration and to deal with the whole problem of educational quality. . . . Higher-quality education is desperately needed here in Chicago."

Mr. Rose agrees. "The problem is not just that the black kids are getting short-changed; they're getting fantastically short-changed," he says. "But what about all these white kids too? There are only two areas in the city where high-aspiration, professional white people will send their children to [public] school."

This shows up in enrollment figures. In 1963 Chicago had 190,000 Negro elementary students and 173,000 whites; this year there are 237,000 Negroes and 187,000 whites. The high schools had 42,000 Negro students in 1963 and 60,000 this year, while white enrollment has dropped from 80,000 in 1963 to 71,000 now.

No Single Solution

Dr. Raymond Mack, head of the sociology department at Northwestern University, says that "in cities like Chicago, stemming the flow of whites to the suburbs is the key. The trouble is, no one thing is going to do the job [but] the one way that you *can't* keep middle-class people in the central city is to let the schools deteriorate." The educational parks might be the answer, if the Board of Education decides that they are feasible. But it may be too late even for that, as Mr. Rose believes.

"What can you show me that can reverse the trend [toward Negro central cities]? I think the whole metropolitan area is becoming very tenuous as a unit in which people are going to want to make a long-term investment. People are really going to have to make a judgment on whether they will just phase out the existing city, or whether it can be saved."

—Jim Hampton

A THEORY FOR URBAN EDUCATION

by Robert E. Mason.*

From *Educational Theory*, Vol. 17, No. 1 (1967).

(14) *The main thing wrong with education in the great cities has been wrong theory.* America comes up with the financial support when it is clear that a big job needs to be done and when there has been a clear proposal on how to do it. Our wars, especially World War I and World War II, and, among peace-time projects, the Interstate highway system, illustrate this if any illustrations are needed.

The wrong in theory of urban education has been neglect of context. General educational theory has been built mainly on notions regarding the characteristic course of human development. Even the challenge to traditional theories of human nature represented in the Darwinian movements of the nineteenth and twentieth centuries preserved the assumption that the development of man as man could be charted. Even John Dewey, who was much more aware of the cultural dimensions of personality development than his forebears, took the position that while both psychological and sociological aspects were involved in education, psychological considerations were always fundamental.[1] Thus, it is not surprising that despite the tremendous cultural diversity of the Great Cities, program and policy have at most points involved the assumption that the impact of such differences on children are accidental. That is, policies of admission, promotion, and academic progression have been set without regard to the differences from neighborhood to neighborhood.

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[1] John Dewey, "My Pedagogic Creed," in Martin S. Dworkin, ed., *Dewey on Education* (New York: Bureau of Publications, Teachers College, Columbia University, 1959), pp. 19-32.

Girls and boys have been admitted to the first grade of any school in any neighborhood in our Great Cities between the fifth and sixth birthdays. Chronological age has been the fundamental consideration in grade placement both for children who began their school work in the city and those transferring in from outside. At the age of 13 or 14, it has sometimes been expected that all children be sent on to junior high school for enrollment in the seventh grade. At one time New York City made this mandatory regardless of the academic standard achieved.[2] Being in a grade, it was held, should not mean having reached any fixed standard but rather having been in school a certain length of time and having attained achievement proportionate to ones ability.[3]

Children with retarded mental development and intellectually gifted children have been identified by tests of intelligence and judgment of teachers, and special administrative arrangements have been made for special grouping (15) and instruction of such children. Some special provision for "socially immature" and "slow learning" children has also been made. The idea has been to make it possible for children to advance with their age groups. Special classes have been provided for the mentally and physically handicapped, the socially immature, slow learners and intellectually gifted. By and large, all other classes have been organized on a flexible basis, with pupils of the same age together. It has been considered preferable to try to fit as many youngsters as possible into regular school classes made up of children of the same chronological age and verbal intelligence range.[4]

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[2] New York (City) Board of Education, Association of Assistant Superintendents, *Study Guide on Policies and Practices Affecting Elementary Schools* (New York: City Board of Education, 1952), p. 6.

[3] New York (City) Board of Education, *Report of Committee on Articulation and Integration* (New York: City Board of Education, c. 1950), p. 6.

[4] See New York (City) Board of Education, *Study Guide on Policies and Practices Affecting Elementary Schools* (New York: City Board of Education, c. 1950), p. 27.

Developmental psychology, then, has provided the theoretical base for recent urban education. And some of the practices thus grounded in assumptions about human development *per se* have come to be looked upon as educational axioms. Yet developmental psychology is not necessarily and inescapably the central scholarly resource for a program of public education. Order in school administration does not demand absolutely that there be city-wide policies of admission and promotion based on chronological age. Neither chronological age, nor developmental age determined in some other fashion, are inescapable as the basis for grouping.

Developmental psychology as a field of study is itself shot through with value-judgments. The criteria in terms of which development is judged are used as criteria only because the culture, or a segment of the culture has placed a value upon them. Yet we have taken the so-called "developmental tasks" of children as revealed in psychological research as setting the appropriate standards and methods for elementary education. This has been the case despite all the talk about the relationship between school and society, learning and the context, individual and culture in response to Dewey and the progressive education movement. Mainly the talk about the social foundations of education by the social Deweyites was applied to large notions of social change to be implemented through education, rather than to pedagogy. The implications of the culture theory for pedagogy were never really explored, thus leaving the field to the psychologists.

If developmental psychology prevailed in elementary education, high schools in the big cities mainly continued to be organized either as academic preparatory institutions or as vocational training centers—specialized trade schools devoted to imparting specific job skills and vocational knowledge. Moreover, much of the reaction against progressive education took the form of an extreme emphasis upon the disciplines of thought and the importance of a central concern with intellectual development in educational endeavors. Various projects stemming from the grants of Ford money and resulting in an array of special

activities of educational import propose implementation of the values and interests of academic scholarship in the society for those who are capable, and specific job training for those who are not. Recent proposals of James Bryant Conant and Robert Havighurst make these assumptions. They both advocate more rigidly compartmentalized types of schools, streaming youngsters into quite carefully organized lines designed to impart authentic systems of knowledge and skill.

IMPORTANCE OF THE SOCIAL FOUNDATIONS

(16) John Osman, senior staff member of The Brookings Institution; addressing the Association of Urban Universities meeting in Louisville in November, 1962, warned that we have no urban philosophy even though the urban age is upon us. Using the flourishing professorship of Tokyo at the University of Tokyo as an example, he advocated that each American urban university establish a professorship of its city, e.g., a professorship of Louisville, Detroit, or Denver.[5] The fact that this has not been done in American universities as yet indicates the continuing failure of American scholars to face up to the realities of the contemporary urban condition. In the lower schools, particularly in the rural and small city context there was for a time a movement which partook of the point of view expressed by Osman in recommending professorships of the city. This was the so-called "community school" movement. It was worked out in considerable detail in Montana during Ernest Melby's presidency of the state university, and inspired works such as Baker Brownell's *The Human Community* and Poston's *Small Town Renaissance*. The theory is forcefully and beautifully presented in the posthumous publication of Joseph K. Hart's *Education and the Humane Community*. Lesser works describing innovations in lower schools in line with the community school emphasis were Samuel Everett, *The Com-*

[5] See Norman P. Auburn, "Problems of Urban Universities," *School and Society*, February 9, 1963, p. 73, for a brief report of the conference.

munity School, Elsie Clapp, *Community Schools in Action,* and Edward G. Olsen, *School Community Programs.* Two important Educational Policies Commission volumes reflected the emphasis, namely *Education for all American Youth* and *Education for All American Children.*

None of these works, with the possible exception of *Education for All American Children* took the Great City seriously. They saw the community as the more characteristic village or county seat city with a population of a few thousand people. In fact, there is a kind of pathos in the Joseph K. Hart work as Hart argues for the community as educator but deplores the disappearance of the small town which he thinks did a superb job of educating in an earlier day. Moreover, there is a good deal of sentimentality in most of these works, as if somehow the integration of school and community were to take place by simply increasing the physical movement back and forth between school pupils and adult members of the community.

But despite these features which weaken the applicability of the literature of the old community school movement to the contemporary urban scene, the underlying theme was a valid one and its adaptation to our thinking about education in the Great Cities is the clue to building an adequate and viable theory for urban education. This position has recently been taken explicitly by a Ford Foundation Associate, the Foundation not having been an organization unduly given to sentimentalism in its approaches to educational policy. Henry Saltzman, Program Associate in the Public Affairs Program Division of the Ford Foundation issued a strong plea for adoption of the theory and practice of the community school in the Great Cities in the 1962 Teachers College, Columbia University Conference on Curriculum and Teaching in Depressed (17) Urban Areas. Saltzman proposed that analysis in depth of neighborhood characteristics must influence the very design and construction of school buildings. The architect and the future principal are to be appointed with the decision to build, and the principal immediately takes leadership in serving as an "honest broker" between

the community and school planners. Four major urban agencies are to be brought together to participate in the planning enterprise; namely, the Board of Education, the Urban Renewal Agency, the social agencies, and the Health and Welfare agency. Pooling all their information about the area, the school finally taking shape is a center whose facilities will be ". . . available for use by social agencies, health agencies, and interested citizen groups on a seven-days-a-week; twelve-months-a-year basis." With the school as a neighborhood base of operations for many social agencies, not only teachers but the entire array of social work and health specialists come to view their shared task as one of building and maintaining an educational neighborhood.[6]

An educational theory laying down the proposition that the public school is concerned exclusively with the tools of literacy and the development of the intellectual powers is inadequate, especially as applied to elementary education in the big city. A central responsibility of the school must be to familiarize youngsters with a main stream of American culture, so that they achieve command of personal skills which will enable them to be a part of it. This way the quality of the school as a community—as a mode of human association—becomes extremely important. Big city schools need to operate as round-the-clock "community centers" or "settlement houses" to approach effectiveness in such a task.

The Educational Policies Commission Statement

The statement of policy issued by the National Education Association in 1962 entitled *Education and the Disadvantaged American*[7] is a document of considerable im-

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[6] Henry Saltzman, "The Community School in the Urban Setting," in Harry Passow, ed., *Education in Depressed Areas* (New York: Bureau of Publications, Teachers College, Columbia University, 1963), pp. 322-331.

[7] Educational Policies Commission of the National Education Association, *Education and the Disadvantaged American* (Washington, NEA, 1962).

portance for education in the Great Cities. The title is unfortunate as is the commonly used designation "culturally deprived." The problem is that of difference or distance from the standard culture. The standard culture is undoubtedly a sick one in many respects. It could well be that by some cosmic adding of lasting values and disvalues, there could be advantage in being "disadvantaged" and much profit in being deprived. Nor does the Educational Policies Commission document in text make clear the relativity of the values and the arbitrariness with which the standard culture applies its standards. Thus, the work is both pontifical and sentimental in style. Yet out of this occasionally unfortunate language there do indeed, emerge recommendations consistent with modern culture theory and of plausible practicality. The following recommendations deserve special note:

(18) 1) The school cannot avoid, and must attempt to modify the home and community environment exerting miseducative influences on children and youth. (p. 15)

2) Development of kindergarten and early childhood education under public auspices is necessary. (p. 17, p. 28)

3) Flexible organization of curricula to allow children to progress at individual rates is advisable. (p. 17)

4) Reading materials and visual aids should be adjusted to the backgrounds of children who will use them. (p. 17)

5) Opportunities for vocational training and part-time work and study should be built into school programs, and these should be given academic status of respect and dignity. (p. 18)

6) Preparation of teachers should give greater stress to the influence of environment on learning and growth; insights provided by anthropology and sociology as well as psychology and human development should be stressed. (p. 20)

7) Smaller classes must be provided (p. 21).—twenty or fewer pupils per teacher (p. 23).

8) Specialist staffs should be extended and strengthened (e.g. nurses, school social workers, guidance and clinical staff). (p. 21)

9) School administrators possessed of skills in human relations and respect for people of different cultures should be appointed. (p. 21)

10) "In many large school systems consideration should be given to developing a new type of educator—a specialist in the problems of relationships among different American subcultures. This person would attempt to relate anthropology and sociology to education. He would need intensive preparation in these three areas and practical experience in disadvantaged neighborhoods. He would help to build contacts between school and home, conduct an in-service program for all the members of the staff, and assist the staff in the solution of individual problems." (p. 22)

11) Administrative decentralization is necessary; the administration of each school should be given freedom of action. (p. 24)

12) Arrangements should be made to enroll new pupils in an ungraded reception class. (p. 27)

13) There should be complete flexibility in assigning teachers, regardless of conventional certification traditions. (p. 27)

14) Schools (including their recreational and athletic facilities) should be open late afternoons, evenings and week-ends for independent study, recreational reading, and similar activities. (p. 27)

15) Relationships between school authorities, teachers, and parents must be systematically cultivated (p. 29). One way to do this is through a lively program of adult education in the school.

16) Attention should be given to the development of fully cooperative relationships with community agencies, e.g. settlement houses, relief agencies, youth boards, (p. 30).

17) Intensive and continuing area research should be available to school personnel. (pp. 31-32)

18) Schools should remain neighborhood or area institutions. (p. 34)

ASSUMPTIONS UNDERLYING THE POLICIES

These policies upon which the National Education Association stood in 1962 are fundamentally sound. They rest on assumptions consistent with what we know about personality as a product of social context and meaning as wrought out (19) in community. The policies stated presuppose the following as social foundations of educational endeavor in Great Cities:

1) A public school system operates within limits. Society gives it a limited amount of time with the children, and a limited budget.

2) Within the limits of time and budget set by the society, parents in big city neighborhoods, as in other communities in our country, are willing to give school personnel considerable freedom to work as they see fit with children.

3) The objective, upon which there appears to be general agreement, is that the school should make the greatest possible contribution to the production of responsible, productive, independent adults. Some laymen would say, "School is supposed to do as much as possible to help young people stand on their own feet."

4) Children live and learn with their whole bodies, and with the neighborhoods in which they grow up. That is, a person is a biological organism, and, as well, a complex of preferences and avoidances built up out of where he has lived, the social

class in which he has grown up, and the religion in which he has been nurtured. All of that is HIM.

5) A child can be sick anywhere in his body, in his house, in his social class, in his religion. Somehow, the valuings involved in all this must be coordinated.

6) A public school is a social welfare agency. Depending on the neighborhood, school programs may be vastly different, depending on what most needs to be done.

With these assumptions in mind, and with the policy recommendations of the National Education Association at hand, the remainder of this article will be devoted to some implications of such theory for practical innovations in urban education.

IMPLICATIONS FOR EDUCATIONAL PRACTICE IN THE GREAT CITIES

Curricular Decentralization

City schools cannot be adapted to neighborhood differences unless a high degree of decentralization is allowed by the city school administration. On the record, decentralization is a policy of most of the Great City Boards of Education. Like all maxims, however, the actual process of individuation of school programs can be facilitated only as the people who exercise power from day to day understand, accept and work consistently to implement the policy. Teachers in most of the big city schools feel that, in actual practice, there is strong pressure from central headquarters to conform to system-wide directives.

The literature of the community school movement has been so strongly accented toward procedural considerations that curriculum organization has received inadequate attention. The argument has been that schools should be released from system-wide curricular directives and standards. Teachers in each school, it has been said, should be freed to develop the kind of program which serves the

neighborhood best. Moreover, it has been proposed that the program should emerge mainly from the agreements reached in discussion groups involving parents, community leaders, and school pupils. Parents, priests, ministers, rabbis, druggists, and business men come to the school to (20) talk with students and students take field trips to learn first-hand of the cultural, religious, political, and business life of the neighborhood.

This version of the community school, which stresses process primarily, is liable to criticism as being unscientific and anti-intellectual. Everyone admits that modern civilization is complex and that a big city is this complexity intensified to a supreme degree. An urban neighborhood is far more complex than a bridge. A good bridge could not be built by amateurs after a series of parlor conversations about "the kind of bridge we want to build." The community school idea as developed in some current educational literature is vulnerable to the same fallacy that has sometimes made laughing stock of the child-centered school. It is that precise knowledge is unimportant; that learning is a kind of free growth which pretty much takes care of itself when people are made to feel at ease with and finally to trust one another.

It is indeed good to feel at ease and to be one of a group of persons who have come genuinely to accept one another. But it is knowledge that finally gives men power so that they can gain liberty. And knowledge of a complicated organization does not come by osmosis. It comes only as symbols which carry meanings are mastered to the point where the symbols can be used precisely and effectively to relate ends and means. It comes only by study.

Undoubtedly community councils can make some contribution to good education. But charming social affairs cannot be relied upon to produce, in and of themselves, an effective school program geared to area needs. With decentralization of administrative authority and with each local board—constituted of specialists concerned with various aspects of health, education, and welfare in the area—empowered to act, curriculum variation among and within

districts becomes possible. Courses of study adjusted to local needs are constructed. Curricula peculiar to pupils in one type of school with a minimum of relationship to other school situations become customary. It becomes possible actually to put into effect the various proposals for local adaptation of curricula which some big city school leaders have long advocated.[8]

Thorough-going application of the social-cultural approach to the entire public school curriculum—i.e., through senior high school—would imply more attention to social, political, and broadly ideological stresses and strains in local neighborhoods. Serious study of the rights, duties, obligations, and opportunities of citizens of urban centers might become the core of a senior high school program built on the social foundations of education. Such a program would undoubtedly be a controversial one, for the emphasis would be on learning about and coming to take socially responsible positions with regard to the issues which need to be faced by people who live and make their livings in a big city. At present, schools in the Great Cities are not building their curricula upon these grounds. Field trips and study of local institutions are frequently used to illuminate or "enrich" the academic or vocational (21) courses of study. Intercultural social and dramatic programs are held occasionally. Adolescents are sometimes drawn in neighborhood councils. Cooperation between the informal, out-of-school teen-age programs of social agencies, religious groups, and schools are found here and there. High school drop-outs, juvenile delinquency among teen-agers, and how to meet the diverse educational needs of students in high schools receive some attention. There is a persisting concern about appropriate guidance, and at-

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[8] For example, see New York (City) Board of Education, *Guiding Principles in Curriculum Development*, Curriculum Bulletin No. 2, 1942-43 Series (New York: City Board of Education, 1942-43), pp. 11-14. See also New York (City) Board of Education, Association of Assistant Superintendents, *Study Guide on Policies and Practices Affecting Elementary Schools* (New York: City Board of Education, 1952), p. 56.

tention is given from time to time to "intercultural education," but systematic development of instructional programs centering in social research and action are rare.

Such policy need not erode academic standards. To the contrary, the best way to bring young people to minimum standard is through individualized school programs adapted to the cultural differences among neighborhoods. To encourage such flexibility innovations such as the following are proposed:

1) A year-round school calendar with all school buildings and playgrounds open 16 hours a day. Recreational and out-door activities should make up a large part of the summer session which should be open without cost to all youngsters in the school district.
2) All course of study directions should be suggestive, not mandatory, and individual teachers and groups of teachers should be given full freedom to develop their own courses.
3) Teachers should be given unlimited access to small supplies, e.g. paper, pencils, paste, scissors, crayons.

Revision of Tests of Readiness

During the 'fifties pedagogic theory in elementary arithmetic, reading, and social studies stressed that real experiences of children in school, at home, and in the neighborhood were to furnish the starting point for learning. Not only things and arrangements in the school, but the life of streets and stores, markets, parks, rivers, harbors, bridges, public buildings, and zoos were recommended to teachers as furnishing the primary experiences out of which children should learn to build quantitative symbols and concepts.

"Natural experiences of early childhood," it was said, provide "fundamental learning situations." Things brought into the classroom (fish, plant, shell, toy, picture), the nurse, custodian, or a parent coming into the classroom, something seen on a trip (a truck, a boat, a police-

man), a holiday, a home experience, a personal experience, a gift—these were examples of what such "natural experiences" might be. Identification of things, sounds, and colors, and appropriate labelling were recommended. The sun, streets adjacent to the school, flowers, birds, gardens, mailboxes, fireboxes, something seen or heard on television or radio, the telephone directory, "interesting places in the neighborhood," the post office, were noted.

This emphasis resulted in many instances of use of environmental features of the immediate neighborhood by ingenious teachers, yet there always remained the reference to general cultural norms in evaluating progress. An example is provided in the content of a standardized test used in New York City in the 'fifties. This examination, called *The New York Reading Readiness* (22) *Test*,[9] was a line drawing-picture discrimination test. There were 148 pictures. The test was used with 5 and 6 year olds to help determine whether they were ready to learn to read. Included were the following items:

1) A tidy Cape-Cod cottage complete with shutters and lawn shrubs
2) A live duck
3) A setting hen with eggs
4) A live pig
5) A crowing rooster
6) A live turtle
7) An ascension balloon
8) A 1920 vintage glider
9) A rustic garden-gate
10) Logs

The manual of direction for teachers administering the test included the following statement:

> Among other factors of readiness for reading, children's experiential background is important and the time of testing should vary for children of vary-

[9] New York (City) Board of Education, The New York Reading *Readiness Test* (New York: City Board of Education, 1947).

ing backgrounds. In those neighborhoods where most of the children have had many rich experiences and where there is no language problem, the children are able to handle the test earlier than in neighborhoods where cultural experiences have been limited or where language difficulties are common.[10]

Yet teachers applying for appointment to jobs in New York City elementary schools in this same era were asked to write examination essays in response to questions which completely ignored the neighborhood differences. The Regular Common Branches license examination in 1949 was made up of five questions describing as many classroom situations. The situation was limited in Number I by the stipulation "a fourth year class." Number II described a "fifth year class and its teacher working on the Unit 'American Life then and Now' . . . [having] decided to take a trip to the Museum of Art to study the exhibits on New England Colonial Life." Number III specified simply "a fourth year class;" Number IV a "third year class." Part A of V specified a sixth year class, while Parts B and C of the same question were general questions about classroom techniques, with a situation not specified. Part C read, "List five other suitable experiences in democracy in the school or in the community that the teacher may use to implement her classroom activities." [11] Age, grade, and subject matter specifications were considered adequate situational determinants. Young teachers were being called upon to write critically, drawing upon their background of professional preparation. With no reference to place, social class, or ethnic factors, they were asked to write about "fourth year, fifth year, and sixth year classes."

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[10] New York (City) Board of Education, Bureau of Reference, Research and Statistics, *Manual of Directions for the New York Reading Readiness Test Forms A and B* (New York: City Board of Education, 1947), pp. 5-61.

[11] New York (City) Board of Education, *Regular Common Branches License Examination* (mimeographed, 1949).

(23) New Textbooks Needed

Otto Klineberg as late as 1962 examined fifteen of the most widely used readers. Overwhelmingly, he discovered, the people pictured are white or Caucasian and north European in origin with names to match. Non-northern European references are highly stereotyped, e.g. an exotic treatment of American Indians, an Italian or Greek organ-grinder, and a Polish vegetable peddler.[12] The existence of such stereotypes has been known for a long time but publishers have failed to respond to the criticism, perhaps because the educators themselves have only recently begun to show real concern. For instance the early immigrants before 1880 have been presented as "pioneers" or "homesteaders," while those coming after 1880 came in "swarms," "teeming hordes," and lived in tenements. Negro slavery has been described in great detail but little attention has been given to the Negro in American culture after the Civil War.

At this writing it appears that some real progress is being made in providing textbooks of greater reality for urban children. The Follett Publishing Company and the Detroit Public Schools came out with a series of "city-oriented" elementary school readers during 1961-62 and the Bank Street College of Education began development of a similar series with Macmillan Company. Macmillan announced in 1963 that it would henceforward use pictures of Negroes and whites together whenever possible in school readers and textbooks.

Health and Guidance Services

The tremendous population density of the Great Cities creates a special need for extensive play fields and exercise areas connected with public schools. This because the important learnings which children get through free play in more sparsely settled areas are come by with difficulty in the Great Cities. And this, too, because the resistance to

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[12] Otto Klineberg, "Life is Fun in a Smiling, Fair-Skinned World," *Saturday Review*, February 16, 1963, pp. 75-77, 87.

disease and the muscle development which free play in a sparsely settled area provides is as basic to learning as knowing the forms of letters is to writing. We might expect the Great City schools to be—in an explicitly and outstanding way—physical culture schools. A school outdoor program for each child extending, perhaps, over a three hour period each day is not too much to expect. There should be agreement on the necessity of school camps, and gradual moves by Boards of Education to acquire and equip sites. This area of need is so great in the largest cities that it should take financial priority over modernized school buildings, books, libraries, audio-visual equipment, special art and music programs. The more fundamental the need, the higher the priority if the work of the schools is to be adopted realistically to area conditions. A *reductio ad absurdum* is not intended in the suggestion that if—budget-wise—a choice has to be made between a school building and a play yard, the latter—in many areas of the city—should come first. There could be an outdoor blackboard; there could be outdoor lockers; there could be baths and toilets; there could, perhaps, be (24) some sort of rain shelters. The coldest days of winter might have to be holidays, but perhaps the time could be made up in the summer months.

Since New York, Chicago, and Newark have already established schools located within larger structures, use of roof-top space for school playgrounds, open-air classrooms and workshops, and school gardens should be considered.

Both in the Great Cities and in our school systems throughout the nation we have been willing to spend large additional amounts of money for youngsters whose difficulties are organic—for the blind, the deaf, the cerebral palsied. There would seem to be no critically grounded reason for not providing special services for children whose disabilities are environmental.

Undoubtedly firm arrangements should exist to make possible referral of severely disturbed students for psychiatric counseling. However, this does not mean that school

guidance personnel should themselves be persons who see the guidance function mainly from this perspective. The full-time professional guidance exercised by the school should be academic, vocational, and curricular. The knowledge and insight constituting the professional competence of these people should be that of the social, economic, and educational facts of life in the context in which youngsters are living. This is to support the notion that individual therapy is an adjunct educational service, not a part of the central range of educational facilities maintained by the public school.

DE FACTO SEGREGATION [1]

From

American Education and the Search for Equal Opportunity.

EDUCATIONAL POLICIES COMMISSION of the NEA and the American Association of School Administrators. NEA Journal, October 1965.

(34) Segregation by race has been persistent in America. In some places it has been sought as public policy; in others it has been the result of housing or business practices.

The type of segregation which had the support of law, as it had in many Southern states, is today recognized as outside the law. The school-desegregation decisions of the

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[1] The article is taken from *American Education and the Search for Equal Opportunity,* which represents official NEA policy by action of the Representative Assembly. 1965. 35¢, paper cover. Stock No. 191-05972. $1.25, clothbound. Stock No. 191-05974. Order from NEA. Payment must accompany orders for $2 or less.

U. S. Supreme Court and the Civil Rights Act of 1964 have made the law on this matter clear. Much remains to be done to realize the effect of removing the legal basis of segregation, but the law at least is clear. In many areas, however, there persists a form of segregation which is produced by discrimination in the sale and rental of housing. It is not limited to any single section of the nation; as legally enforced segregation has generally been. Whites are free to move to virtually any housing they can afford. Negroes in many places do not enjoy a similar freedom but find instead whole areas closed to them. The result in many cities has been concentrations of uniform population as dense and as segregated as a medieval ghetto. It is this form of racial separation which is here referred to as *de facto* segregation.

The price of such segregation, viewed from the perspective of the general welfare of the nation, is high. When people of different cultures, classes, or races are kept apart, whether by circumstance or by design, they tend to acquire many stereotyped, exaggerated, and false impressions about each other. When the segregation is racial and based either directly or indirectly on prejudice, it also works psychological damage on all races concerned. The persons who cause the segregation through their lack of understanding or disdain for others develop an irrational sense of innate racial superiority. Members of the disdained group live constantly amid evidence that they are looked down on. If they are Negro and lack a cultural base on which to build a feeling of self-esteem amid the insults, they are pressed constantly to feel shame and resentment at inherited characteristics. They may retreat into apathy and defeatism or lash out in bitterness and hatred with much of their human potential in either case withering within them.

Thus, the damage wrought by segregation occurs at different levels. On the one hand, it denies people a good opportunity for learning to live in a multiracial and multicultural world. On the other hand, it denies people the

mental health necessary to the fullest use of their talents. In both ways, everybody suffers, and opportunities for learning and progress are less than they might have been.

In American practice, segregation is inherently unequal, for it has been based—and this is universally sensed—on a persistent and widespread prejudice against nonwhites. Today, the nonwhites are protesting. But the educational problem being inherent in the situation, long antedated the protest. The protests have dramatized the inequality and have made it impossible to maintain any longer the fiction that the conditions of the competition for success in American life are equal or fair.

The awareness that conditions are grossly unfair is a large step forward. But it does not of itself solve the problem of school segregation, and still less the rest of the problem of equal opportunity. Many parents prefer that their children go to school close to home, and this preference for a neighborhood school is frequently based on sound educational reasons and may be free of prejudice. It is, after all, more convenient to go to school near home; it saves on transportation: and the school and the home need to be in close contact. The fact that a neighborhood school may also be limited to children of one race is seen by many to be incidental. Furthermore, even parents who know that the situation is unfair may still prefer that their children not go to school with children whose cultures are widely different from their own. This phenomenon occurs even within the races. Middle-class Americans of any race usually resist having their children mix with disadvantaged (35) children of the same race. Thus it is not uncommon to find gerrymandered school attendance zones even in places where community leaders are fully aware of the corrosive effect of segregation on American ideals.

The following principles should govern the search for solutions to the problem of de facto segregation in the schools and the development of an integrated school system and an integrated society.

Segregation on grounds of race is bad. In education, it denies children, white or Negro, a chance to obtain a broader perspective on the society. It complicates the overcoming of racial stereotypes. In middle class schools, it breeds a sense of innate superiority which is unjustified and unhealthy. It causes Negroes to feel that they are being discriminated against and produces the inherently unequal circumstances of which the Supreme Court spoke in 1954.

Conversely, contacts among children of varied backgrounds are essential to education. Pupils learn much from each other. Laws or customs which enforce segregation cannot prevent contact between cultures; they merely prevent those types of contact which would do the most good. They do not insulate cultures; they only prolong incompatibility.

The best way to build good relations between the races is to enable each race to have experiences with the other which are welcome and fruitful and in which each race can come to see the other as composed of individuals and not stereotypes. Negroes who have no contact with whites—or only contacts which threaten their security—tend to develop negative attitudes toward whites in general. The school which is integrated can supply interracial experiences and offset the possible damage from their denial. By contrast the school which is racially segregated loses this capacity.

Desegregation of schools should be planned with awareness of its possible consequences and likely effects on the whole community. No two communities are identical, and each must approach the process of integration with full knowledge of local facts. There are communities, for example, where insistence on an even racial mixing in schools is more likely to produce a resegregation than an integration of schools. Care should be taken to avoid steps which will defeat the larger purposes sought through integration, and the programs of schools should be planned to increase, not decrease, the amount of integration.

The neighborhood school has many advantages, particularly in early education. It facilitates the efforts of the teacher to know the home and community, which explain so much about each pupil. The neighborhood school makes it easier also for parents to identify with and support their children's education, and it is easier to make a (36) community center of the school if it truly is a neighborhood school. However, the theoretical advantages of the neighborhood school should not be used to argue in its behalf where they are not carried into practice. Teachers in a neighborhood school may fail to profit from its advantages or may learn little about the background of their pupils. The school becomes a community center only through the conscious efforts of citizens, teachers, and administrators. If it is not or cannot become such a center, the reputed advantages of the neighborhood school disappear.

In addition, the benefits of the neighborhood school are not necessarily lost if children are transported outside the neighborhood. If a teacher has time, he can come to know homes and communities that are geographically far apart, and schools in consolidated attendance districts of vast size have succeeded in involving parents deeply in the education of their children.

The simple mixing of races in a school does not of itself solve all problems of integration. Desegregation is a physical phenomenon, but integration is a psychological phenomenon. The mere physical presence of different groups in the same building can be bad as well as good. In heterogeneous situations Negro children, if they are disadvantaged, may be unable to compete academically. White pupils may come to feel superior, and Negro pupils despised and lonely. The various groups may develop only disrespect, fear, or jealousy of each other.

Educational considerations should be primary in the schools. The questions which arise from efforts to eliminate de facto segregation deeply involve public passions pro and con, thereby complicating the search for solutions

that the public will tolerate. This search must be illuminated by the understanding that the purpose of schools is education and that no child is being served if education is being made impossible. School authorities must make clear when they believe that pupils are being used as pawns in the struggles of adults. The question to be asked about all proposals is whether they will improve the education of the pupils involved, not whether they will contribute to other goals, even desegregation.

In line with the foregoing considerations, the Educational Policies Commission recommends:

1. *Where de facto segregation exists, intensive efforts should be made to desegregate the schools.*

2. *It should be recognized that effective desegregation may be impossible for the schools to accomplish alone and that they must have the intensive support of other public and private agencies to make it possible.*

3. *Funds should be expended within a district and within a school with a view to equalizing educational opportunity, not with a view to equalizing per-pupil expenditures.* This means that more should be spent for each culturally disadvantaged pupil, just as for each physically handicapped pupil, than the average per-pupil expenditure in the school district. The greatest help should be given to the children in greatest need.

This recommendation is made despite the difficulty that would often be encountered in deciding which children should be classified as disadvantaged. For most children, the decision is likely to be cut-and-dried. Since disadvantage so often corresponds closely with extremely low income, the family income level might be used as the chief criterion.

Because it is impossible for the money to be spent on a child-by-child basis, some children will be under- or over-financed according to the criteria of this system. But the inequities would be much less than under a system in which all children are treated as if their educational needs were equal.

4. *Provision should be made in every school, preferably with pupils and parents participating in the planning, for intensive intercultural activities.* Such activities should be an important part of every school program. When children go through school and develop little sense of the way large portions of the area population live or of the contrast between American ideals and American reality, their education must be considered seriously inadequate. The schools should provide a basis in experience as well as in knowledge for combating stereotypes.

5. *Attendance district boundaries should be so established and modified as to avoid boundaries which contribute to racial separation.*

6. *Interracial experience should be provided even in places where the population of an entire school district is of one race.* This can be done, if need be, by transportation to bring pupils of different races together for certain activities. Glee club concerts, games for small children, tutoring by older pupils, or joint language clubs are examples of these activities. Art, music, and drama studios provide excellent opportunities for the development of self-respect and of mutual respect between the different races or cultures. For participants, they also motivate effort in other subjects. There is a host of other possible activities. Parent and student groups, such as PTA's and student councils, have proved ingenious in developing ideas, acting on them, and intensifying the contacts made.

Especially is it important that all-white schools in suburban areas establish relations with schools in the central cities and bring their pupils into personal contact. The suburban schools should recognize that their pupils are being deprived of experience of a part of reality if they maintain isolation and that the quality of education in the suburbs is thereby diminished. To make parents—and teachers—aware of this is an important part of school leadership.

7. *Urban renewal should involve housing and school planning in cooperation.* Many people choose to live in an

area partly on the basis of the school situation. The goal should be to create neighborhoods that will attract a mixture of racial, cultural, and economic groups. It is inexcusable for urban renewal to result in the preservation or spread of segregation, yet that has occasionally been its result. It is equally inexcusable for public housing to contribute to de facto segregation, yet that has occasionally been its result. Urban renewal and public housing should help to revivify, not to kill, the common school.

8. *Where it is impossible to put all children in a desegregated situation, that goal should still be sought for as many as possible.* Where, for example, the children of one race form a small minority of the school population, even the most complete dispersal of those children through the educational system will not produce an integrated situation. Nevertheless, even in such a situation there may still be another way to look at the problem: namely, to seek a healthy integrated situation for as many students as possible. Helping just a few more pupils to live in a multiracial world is worth considerable effort.

9. *School staffs should be racially integrated.* The principles which apply to school population apply also to school staffs. Racial separation of faculties creates the same problems as racial separation of pupils, and desegregation of school staffs offers the same advantages as desegregation of pupils. It provides pupils with examples of good relations between the races and of equal status of the races and helps to counteract or prevent stereotyping. All teachers should be selected and assigned on identical standards, irrespective of race. To effectuate this policy implies upgrading of teachers whose own educational background may be less than adequate, and the needed training should be provided at public expense.

EXTRACTS FROM BRIEF OF THE UNITED STATES FILED IN BROWN 2 (pages 12, 26 and 29).

(12) The extent of the boundary alterations required, in the reformulation of school attendance areas on a non-racial basis, will vary. This is illustrated by the recent experience in the District of Columbia in recasting attendance boundaries on a wholly geographical basis. In the neighborhoods where there is little or no mixture of the races, and where school facilities have been fully utilized, it was found that the elimination of the racial factor did not work any material change in the territory served by each school. In biracial neighborhoods, however, the objective of securing maximum utilization of facilities, on a non-racial basis, could be achieved only by making radical revisions in the area covered by the formerly Negro and white schools.

(26) If the program for desegregation formulated by the defendants will remove, as expeditiously as possible, state-imposed or state-supported racial classifications of pupils in public schools, the lower courts should not substitute their judgment respecting the administrative features of the program for that of the school authorities. The Constitution prohibits the maintenance of segregated school systems. It does not compel the adoption of any specific type of nonsegregated system. The decisive inquiry is whether race or color has been entirely eliminated as a criterion in the admission of pupils to public schools. The essence of the Court's decision in these cases is that there be no governmental action which enforces or supports school segregation.

(29) School authorities may wish to give pupils a choice of attending one of several schools, a choice now prohibited. Teachers may have to be transferred, and teaching schedules rearranged. It is possible, of course, that abolition of segregation would in many areas produce no serious dislocations, and no wholesale transfers of teachers or pupils would be required. This could result from purely geographical factors, for it would still be likely that the pupils of a school would be representative of the area in which it is situated.

EXTRACT FROM BRIEF OF CONGRESS OF INDUSTRIAL ORGANIZATION FILED BY HON. ARTHUR GOLDBERG IN BROWN 2 (pages 7 and 8).

* * *. Such broader considerations, of course, need not be stated by the Court. But they are nevertheless relevant in the Court's decision as to whether it will take the immediate step before it.

Three considerations seem to us worthy of discussion. The first is the general question of the doctrine of *Plessy v. Ferguson* and the arguments which we believe have been erroneously addressed to the holding of that case. The second is the extent to which the compulsory nature of primary school education should be regarded as differentiating it from the cases of higher education already decided by the courts. Finally, we think that a word should be said concerning the "racial friction and tension" [1] which have been relied upon by some courts to justify their refusal to determine whether segregated education is, in fact, equal education.

1. *Compulsory intermingling is not the only alternative to compulsory segregation.* Much of the argument relating to the basic question of the validity of racial segregation under the 14th Amendment has, we believe, missed the point. For example, in the *Briggs* case, No. 101, this Term, it seems to have been assumed by the defendants that the only alternative to compulsory segregation is compulsory intermingling of the races. Testimony was offered by the defendants in that case to the effect that separation of the races in the public schools would occur even "if this issue should be settled on a voluntary basis" because if Negroes were given a choice as to whether to attend Negro schools or schools which were predominantly white, they would prefer to attend schools of their own race.[2]

Argument based upon such testimony seems to us to

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[1] *Briggs v. Elliott*, No. 101, this Term, R. 180.

[2] "Q. Do you know what the Negro's reaction would be to mixed schools?

. . . .

(Continued on following page)

miss the very point at issue. The essence of the whole segregation controversy lies in the distinction between a provision of law *permitting* individuals to separate themselves according to race and a provision *requiring* them so to separate. As we pointed out in the *Sweatt* and *McLaurin* cases, it is this important distinction which the Court itself ignored in *Plessy v. Ferguson*. A law permitting individuals to separate themselves according to race permits individuals to exercise their own freedom of choice, to respond in whatever way their prejudices or lack of prejudices may impel them. To require individuals so to separate permits no such choice. Prejudice is imposed by the constituted authority of the state without regard to the preferences of the individual. Yet this Court in the *Plessy* case treated the two together and assumed that they were the same. Thus the Court said that "we cannot say that a law which authorizes or even requires the separation of the two races in public conveyance" is violative of the 14th Amendment. 163 U. S. at 550. And the argument against the statute, the Court said, "assumes that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the Negro except by an enforced commingling of the two races." 163 U. S. at 551.

The argument, of course, need make no such assumption. The alternatives are not enforced segregation or enforced commingling. Nor is the question whether a law may constitutionally *permit* the separation of the races. The alternative to enforced segregation is freedom of choice and the question is whether a state may deny that freedom to individuals and require them, willy-nilly, to separate according to race.

(Continued from preceding page)

A. I could not predict what they would do but I have an opinion that is based upon what a number of Negro school administrators have said to me, that if this issue should be settled on a voluntary basis that you would have a continuance of substantially the same situation.

. . .

A good many Negroes, Negro school administrators have said that if they remain free to choose the schools to which they would go, they would prefer to have schools of their own race."

—*Briggs v. Elliott*, No. 101, this Term, R. 116-117.

EXTRACT FROM BRIEF OF AMERICAN VETERANS COMMITTEE FILED IN BROWN 2 (pages 5 and 6).

Question 4(a) seems to imply that a decree ordering admission of Negro children into schools heretofore attended solely by white children must necessarily refer to normal geographic school districting and/or to admission of the children into "schools of their choice."

The administration of public school systems is not, and need not by this Court be, thus limited. These cases do not involve modes of administering the public schools, except at one point: that the governmental authorities make no racial distinctions between children in the operation of the public school system.

The easiest way to operate a normal public school system without racial distinctions is by assigning children to schools according to their residence within normal geographic school zones. It is a factual, impersonal, and traditional criterion in administering public schools. It tends to reflect the normal neighborhood pattern, it permits easier programming of school and community needs, and it avoids the imbalance between schools which results from unrestrained migration of pupils. Nevertheless, we do not contend that the Constitutional guarantee of equal protection of the laws requires that boards of education be compelled to admit children into schools solely on geographic bases, or that the boards be compelled to permit, or be enjoined from permitting, each child to "choose" which of several public schools he will attend. *Cf. Pierce v. Society of Sisters*, 268 U. S. 510 (1925); *Farrington v. Tokushige*, 273 U. S. 284, 298 (1927). These are matters of public school administration which are committed to the sound judgment of school officials; they are not matters to be regulated by judicial decree.

EXTRACTS FROM ORAL ARGUMENT, CASES 1-5, OCTOBER TERM, 1954, VOL. 3, APRIL 11-14, 1955.

(23) Mr. Fatzer: That is Item No. 4, "The following is the estimate of the number of students in 1955-56 that would be in the affected schools."

Justice Reed: Does that mean Negroes, too?

Mr. Fatzer: Yes.

Justice Reed: You don't know the percentage of Negro students in each school?

Mr. Fatzer: No, I am in error, your Honor. That is total enrollment.

Justice Reed: I understood you had a total enrollment of some 8,000?

Mr. Fatzer: Yes, that is correct.

Justice Reed: Then there is only 2750 accounted for here.

Mr. Fatzer: We would be glad, your Honor, to provide this breakdown with respect to these schools, with respect to whether they are white or colored in each grade.

Justice Reed: It would help me.

Mr. Fatzer: All right. In other words—

Justice Reed: You have redistricted and what I was interested in is to know whether the redistricting has resulted in essential—whether all the school population will be unsegregated, or whether you will have all of the schools in one section all colored population.

(24) Mr. Fatzer: The colored schools are in the areas that are predominantly through history, geographic residential colored areas.

Justice Reed: Very normal that there is a separation of population.

Mr. Fatzer: Now on the fringe, some of the colored students under this plan would go to the white schools, the white children that are in the new areas, new districts, could likewise complete their course. They can attend either school. It is a privilege that is given to either child.

Justice Reed: And we do not know how long that will continue, strictly speaking?

Mr. Fatzer: Well, from now on. I mean, segregation.

Justice Reed: The plan could result in not a segregated school, but an all-white school and an all-Negro school?

Mr. Fatzer: It is my understanding, sir, that that would not be the case. Now for the children, if you will note under No. 2-D, any child who is affected by the change in district lines as herein recommended, be given the option of finishing elementary grades. That would be, if he was in the first grade, he could finish the elementary grades 1 to 6 in the school which he attended this current year. Now that is equally available to both the colored and the white students.

Justice Reed: I understand that, but it is also (25) equally available that all the Negroes could go to one school and all the whites to another.

Mr. Fatzer: I am not prepared to say on that, sir, but my understanding is that that would not be the case. We will be glad to furnish the Court maps showing this area and we would be glad to show a breakdown under No. 4, Mr. Justice Reed, of the per cent and the number of the different white and colored students.

Justice Frankfurter: I would be grateful to you if you would add to that what is not fully clear in my mind and I do not want to take the Court's and your time—if you would be good enough to state why there had to be, in the judgment of the School Board, redistricting and the basis on which the redistricting was done.

Is my question clear?

Mr. Fatzer: Why redistricting—

Justice Frankfurter: Why was it necessary, in order to carry out the desegregation, the abolition of segregation, why was it necessary to have new or changed school districts and what were the considerations which led to the kind of districts that they carried out?

Mr. Fatzer: It is my understanding, Mr. Justice, that the reasons they required the redistricting of the schools, as this proposal would establish, is that colored schools did not have a district previously, that is, (26) in a general

large way, that children living in this particular part of the city would attend this particular school.

Justice Frankfurter: They just took them by bus to schools set aside for colored children?

Mr. Fatzer: That is right.

Justice Frankfurter: I see.

Mr. Fatzer: They gathered them up. So that now they have definite proposed districts for each of these schools with definite geographic lines.

Justice Frankfurter: And your maps will show the nature of the districts, the contours of the districts, will they not?

Mr. Fatzer: That is correct. Thank you, your Honors, very much.

The Chief Justice: Mr. Carter?

ORAL ARGUMENT ON BEHALF OF BROWN, ET AL.

By Mr. Robert L. Carter.

Mr. Carter: We are in accord with Mr. Fatzer that the case should be reversed and remanded to the District Court. We feel that the decree should be entered by this court declaring the Kansas statute by which power the Topeka Board proceeded to organize and have segregated schools, that that statute be declared unconstitutional and void.

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(31) Mr. Carter: Yes, sir. There are five who are in the junior high school who have moved out of this class because they are not in a non-segregated school. About six of them are attending Washington, Buchanan, and Monroe schools which are the segregated schools.

Justice Harlan: Is that the result of compulsion, or their own choice?

Mr. Carter: Well, your Honor, as a result of expulsion, this plan, what is known as the third step—there were 18 school districts in Topeka. The first six schools listed on page 2 of the Order, the papers which the At-

torney General gave you, those schools are the remaining six schools in which segregation still obtains, the all-white schools. The lower four schools are the all-Negro schools.

In all of the other districts, that is approximately 12, Negro and white children are attending schools together, that is the Negro children are able to go to the schools that are nearest to their homes.

This third step purports to complete the integration of the system and to bring into the system the three Negro schools and make it a part of the total school system. Now instead of 18 schools, you will have 21 schools purportedly servicing every one. Our objection to this is the fact that in our opinion these three schools will remain segregated, all Negro children will be attending them for many years to come and (32) we think that does not conform to your Order.

Justice Douglas: Are those Buchanan, Monroe and Washington?

Mr. Carter: Yes, sir.

Justice Clark: Will that be on a voluntary basis, you think?

Mr. Carter: No, that will not be on a voluntary basis because the Negro children who now live in the District, as this thing is reorganized in the district serviced, for example, by Buchanan, as you will note, the children in this district have an option to go to a school outside of the District, but since the Negro children only had the option or the right before this thing was put into effect, to go to Buchanan, Monroe and Washington, they can not exercise an option to go to any other school than the Negro school. That means this, that the white children will go out of the district and continue to go to the schools they are going to and the Negro children will be forced to continue in Buchanan, therefore you will have segregated schools.

I think that is as much segregation as before the May 17th Order.

Justice Harlan: Do you attribute that result to the way the option system may work rather than the way the district is made up?

Mr. Carter: Yes, sir, I know nothing about the (33) district. I cannot say whether the districting is done fairly. I do not know anything about the matter. But on the face of it, this is my objection to the plan as it is given to us by the Attorney General.

Justice Clark: I thought all the students would be given a choice as to whether they want to stay there or go to another school under Section 3, page 1, the bottom of the page. It does not say all, but it says the estimated number of students who will transfer is indicated as one-third.

Mr. Carter: I know, Justice Clark, but if you will look on page 1, Item D on the third step, this is the option, that "Any child who is affected by change in the district lines as herein recommended, be given the option of finishing elementary grades in the school which he attended 1954-55 and continue therein."

This is the option to be exercised and this is the option where the Negro child has no option and the white child in the District that is serviced by one of the former Negro schools, has an option to go out of the district and the Negro child has not.

The Chief Justice: Thank you, Mr. Carter.

* * * * *

(35) Justice Reed: From what you say, I take it that you consider it proper to allow an option to a child to go to another school, that is within the limits of the Constitution?

Mr. Fatzer: Bearing in mind, sir, that our understanding at present—

Justice Reed: Before you answer that, may I make another statement. I understand that normally a child in Topeka goes to the school in the school district in which he resides?

Mr. Fatzer: Yes, sir.

Justice Reed: Now, there is a variation from that which allows him to go to another school if he has been going there before. That is the 2-E section?

Mr. Fatzer: Yes. He can complete his elementary course in the other school, if he should be in another district.

Justice Reed: A child who goes to school for the first time, for the first year, in the first grade, may he choose a school to which he goes?

Mr. Fatzer: The first year only.

Justice Reed: And after having chosen the first year, then he continues there?

Mr. Fatzer: He must attend in the district in which he resides under plan 2-E.

Justice Reed: If he attends in 1955-56, you interpret that to mean only for 1955-56, for that year?

* * * * *

(56) * * * The Board of Education, however, called upon the Superintendent to have that map by the first of July, and in spite of the fact that there had been suggestions of administrative reasons that would make that impossible by the first of July, this zoning map was produced. We call attention to that because, as I have indicated to you, we think it will be helpful, that sometimes when the Administrators in candor and in honesty think that something can not be done, that if there be an affirmative action taken, that ways are found to meet that situation, and that was done in the instant case.

Mr. Corning did furnish the zoning maps. Now, I have heard the question asked as I have sat here this morning, as to the reason why the zoning maps were necessary. In our jurisdiction they would be necessary because, prior to the time of the decision of May 17, there were schools designated for Negroes and schools designated for whites, and persons within the respective areas would go to the designated schools because of that circumstance. And when this Court, by its decision of May 17, struck down the segregated setup, it became necessary to have zones having to do simply with the geographic situation, rather than being based on the question of race or color. And that was undertaken. That is what was done by the first

of July. And then with those zones set up, Mr. Corning, as the Superintendent, presented to the Board a plan (57) which, by various steps, would be carried forward until, according to the plan, in September of 1955, the school system was to be completely integrated.

I call your Honors' attention to the fact at the outset that there would be no need for anything beyond a decree saying what the Board of Education has indicated, what the Superintendent has set forth as a plan is to be envisioned for our schools as of September, 1955. That, according to the plan, is to be a complete integration. If that were all, we would ask nothing other at the hands of this Court, than a decree which would set forth that there should no longer be an administering of the school system in the District of Columbia where the question of race or color was in any sense involved, as a part of any administrative action, as a part of any attendance as far as school children were concerned, as far as teachers were concerned.

And be it said to the credit of the Board of Education in this jurisdiction, they have gone forward in the doing of all of that. They have gone forward in the matter of integration both as to pupils, and as to teachers and as to administrative officers.

However, we have concern, because as far as some of the plan, it lends itself as we see it, to the possibility of error. Even though, as has been indicated, the provision is that students—if I have not indicated to your Honors that this (58) is fundamental in it. I should perhaps first say that. That the suggestion is that students under the new zoning will have the right to go to schools of their choice within this area.

In other words, if I be in a given area, school area, I have the preferential right to go to that school that is in that area. But it allows the option of remaining at school until graduation is had if the individual desires to do so.

In other words, as we conceive it, a geographic school district which in, and of itself, would lay the proper foundation for the integrated schools is superimposed on a

right that may be exercised by a student, the result of which is, as we see it, that race is still made the issue, and the question of the segregation is carried forward just as before, because by the exercise of this option, a child may continue to stay in the school until the time of his graduation.

Justice Reed: Is there more than one grade school in a school district?

Mr. Hayes: Yes, your Honor.

Justice Reed: They have several in a single district?

Mr. Hayes: Yes, your Honor, or there will be a number of elementary schools within each school district.

(59) There would probably be not as many junior high schools but I venture to say there are some in which the district takes over one junior high school. If I be incorrect as to that, as I say that may not be. But the districting has to do with the question of the elementary school area, the junior high school area, the high school area.

Justice Reed: That is unusual in my thinking.

I was not aware that there was more than one elementary school in a district.

Mr. Hayes: I am certain, if your Honor please, that that is correct.

Justice Reed: In that district any white child or Negro child can select his own school?

Mr. Hayes: He goes to the school nearest to him in his own area.

Justice Reed: It is measured by feet or something?

Mr. Hayes: I do not think there are instances very often where there would be a question—

Justice Reed: It would be easy enough if you have one school in a district. If you had only one school, everybody closer to that school than any other, he would go then to that school?

Mr. Hayes: Yes, it is my understanding as I say, that a number of schools may be within a district.

Justice Reed: That was true before with segregation.

(60) Mr. Hayes: I beg your pardon.

Justice Reed: That was true when you had segregation, you had overlapping district?

Mr. Hayes: Yes, sir. Well, now, with the present school districting there will be schools still as I conceive it in so far as the elementary schools are concerned as your Honor will see—in the junior high schools and it may well be that that is not true then, but I am relatively certain and as I say, my friends can give you the statistics actually with respect to that that there will be elementary schools, there may be other elementary schools in the same district but he goes to the one that is nearest to him.

Justice Reed: Is that in the statement?

Mr. Hayes: Well, there is nothing in the statement, if your Honor please, that breaks it down into whether one—

Justice Reed: Do you have a regulation? How do you know that the child is to go to the nearest school in the District?

Mr. Hayes: The only way I can say that to you, sir, is that that is a part of what I understand the Corning plan to be. The Corning plan would provide that the child shall go to the school nearest to him in his district.

Justice Burton: Mr. Hayes, you referred to the (61) right of a child to stay in a given school until his graduation from that school. I take it that this is merely a temporary measure, is it not, that has to do with the status at the moment and it will work out over a period of two or three years? That is not to break up the continuity of the course?

Mr. Hayes: It would presumably work out at the end of the graduation period through the intermediate grade from the time the child graduated from that to the junior high school, that would end his right to exercise his option.

Justice Burton: If so, the child last year, if he was in junior high school, he could complete his junior high school course without breaking into it and being forced to go somewhere else?

Mr. Hayes: That is what I understand the plan to suggest and the plan purports to suggest that immediately

you go into the new area, in other words, when you go from the intermediate to the junior, when you go from the junior to senior high school, you have the right to stay until graduation is over.

Justice Burton: You are talking about matters of continuity for the child in a given school?

Mr. Hayes: That is what is urged as being the reason for the thing. I suggest, that it is the question of continuity within the graduation of a child in a (62) particular school.

Justice Minton: You do not contend that it is done for any purpose of discrimination?

Mr. Hayes: No, the actual language, if your Honor please, would not result in discrimination. We are concerned as to whether or not the administering of it might not be distorted, and not in any sense saying that the present administration has done any such distorting. I am in no position to say that and would not say that. But we are concerned that the language of a decree which we are asking would be of such character as would render impossible the use of that device as a means of discrimination.

Justice Black: How would this be done?

Mr. Hayes: By leaving this option—

Justice Black: I mean how could the plan which you have just outlined that they are suggesting be used for discrimination?

Mr. Hayes: Well, this type of thing could occur as we see it, that a child who had a right to go to a particular school by reason of the geographic area might not be allowed to go to that school because in that school there was a child who exercised the preferential right to stay there until graduation.

Justice Black: I thought the plan provided that they were given a choice, some were given a choice and others had (63) to go to specific schools.

Mr. Hayes: If your Honor pleases, what the option is that is allowed is that, if I am in school "A," I can remain in school "A" until graduation unless—

Justice Black: You do not object to that, do you?

Mr. Hayes: Well, when your Honor says we do not object, we object to it simply because of the fact that we feel that the allowance of that is still the carrying forward of the old idea of the segregated setup, because the setup, because the right to remain in that school was basically one of color.

In other words, the person went into that school because of this segregated setup.

Justice Black: You mean you want a decree that will prevent an option being given to children where there are two or three schools to go to, to permit them to go to that one school?

Mr. Hayes: No, we do not think that the decree from this Court should do any forbidding. We think rather, that the decree from this Court should simply indicate that there should be nothing done where color was used as a criteria. Now we feel that this is a possibility and is a perpetuating of the old idea of color being the criterion.

Justice Black: Is it your idea that because there is a possibility that there should be no option left to the children of either race to select their own schools?

(64) Mr. Hayes: No, we think rather, if the decree were to take the shape which I have suggested to your Honor, that then in the event that there were showings, flagrant showings of a violation of this right of option, that then there would be the right to go to the Courts without the establishing of a principle that we feel has already now been established.

Justice Black: I have not quite made my question clear. Can that come from mere option of the child to choose one school rather than another?

Mr. Hayes: Well, we feel—

Justice Black: Would you object to that under any circumstance? Do you believe the parents of the child or the child would be left free to select one of the schools? I ask you that because I know that has been the rule all over the country where they have two or three schools.

Mr. Hayes: Well, if your Honor please, as we conceive it, as I have said to your Honor, in fairness so far as the District of Columbia is concerned, I do not find too much to give me concern. But I would be concerned since we have adjusted ourselves to other decrees, about a decree that left an option to the individual, himself, because, if that option were left, it seems to me that the very force of the decree might be obviated by that sort of a device.

(65) Justice Black: Would you go then far enough to say that this Court should provide that the law is compelled to deny option of children to go to one school rather than another?

Mr. Hayes: No, I have said, your Honor, there should not be any such denial. I do not think this Court should undertake to say that. I think, rather, that a decree of the character which we have in mind would not require that at all. It would not estop the questions of options properly exercised, but may, as I say, give rise to the possibility of overcoming what might then become a flagrant violation.

Justice Black: You mean that coercion instead of option, freedom of choice, you would want that prevented?

Mr. Hayes: A number of things of that character might come in and might come in under the heading of "Option." And that is the reason I believe that I should bring these things up.

Justice Reed: Let me pursue that point.

Mr. Hayes: Yes, Mr. Justice.

Justice Reed: I am surprised to find there are two or more schools in a district in the District of Columbia, but let us assume that there are two schools. One of them used to be a Negro school and the other white. Now then you have an objection to allowing the students to choose which one they (66) go to?

Mr. Hayes: Mr. Korman has stated to me that what happened was only true in two instances where they were so close together that they could not draw two circles.

That may answer what was in your Honor's mind and may correct what is in my mind except for these two exceptions.

Justice Reed: Let us take those two exceptions. Do you object to a choice of schools in that one area or two areas when there are two in the same district?

Mr. Hayes: No, it is not that.

Justice Reed: The ultimate result would be one of them could be all Negro, the other could be all white?

Mr. Hayes: Well, with a small overlapping to which Mr. Korman makes reference, in a city such as ours, I do not believe that that would come as a possibility. It might be but I do not think by any type of gerrymandering or anything else, there could be any such situation that would end up with there being simply a white as against a colored school. Now there may be areas from a geographic districting which might end up in what your Honor says with respect to all white and all colored. That might be.

Justice Reed: Concerning Justice Black's questions, you have no objection constitutionally to the selection in the District by children?

(67) Mr. Hayes: Well, when your Honor says it in that wise, I have a concern that I did not gather just what Justice Black's question was.

We do not think that this Court should say by its mandate that no one shall have the right to exercise an option. We do not think that that would be right.

Justice Reed: We do not say that. We say that they can exercise an option.

Mr. Hayes: No. If your Honor please, if your Honors would confine the decree to the language and character which we think ought to be, then we feel that abuse of the option period would fall within the purview of such a decree. And, as Mr. Justice Black has indicated, at some time further along the line, somebody says, "Oh, I am going to exercise my option," if you could go in and say this wasn't an exercise of option, if it was coercion or anything else, that is what we would be concerned with. May I call your Honor's attention to an example of something which has happened in our school system which gives us concern as to the actual putting into effect of the regulations as provided?

I just answered a question by saying that when you graduate from one level to another, that the person who goes into this new level, presumably then comes under this geographic condition. He does not have any right now to claim promotions or anything of that character. We had the (68) situation develop that there were, according to what we are advised, a graduation in which there were 1,018 junior high graduates entering the high schools, according to new non-racial boundaries. Of the students promoted, 571 came from schools of the old Negro division and 525 came from formerly white schools.

122 of the students from former all Negro schools were promoted to six former all-white high schools. One Negro boy moved from an integrated former white junior high into vocational high which had retained its Negro enrollment.

No white students were promoted to former Negro schools. Now, we call attention to that sort of circumstance, that it would be a rather unusual thing with the zoning change as has been indicated, zoning now without regard to color, new zoning with overlapping districts where, in one instance, there were certain Negro areas that now the new zone which is the unsegregated situation goes deep into that area, it seems to us a rather unusual circumstance that under those conditions 120-some Negroes would go, be graduated into a new area, to a white high school, and that there would be no whites, who, having been promoted, would go to a Negro school. It is the type of administering of that kind that gives us the concern.

Justice Frankfurter: May I ask you to what issue more readily you are addressing yourself? Is it to the kind of (69) decree this Court should fashion in directly greater detail than fashioned by the District Court or which?

Mr. Hayes: If your Honor please, just what I have in mind is the type of decree that this Court should pass in remanding the case to the District Court.

Justice Frankfurter: Do you think this court can go into particularities?

Mr. Hayes: No, sir.

Justice Frankfurter: As to what would or would not operate not as a fair opportunity for a fair choice but some kind of a "huggamugga," some kind of a manipulation whereby what is deemed to be a fair choice is not really a fair choice.

Do you think we could particularize that?

Mr. Hayes: No, I do not ~~think~~ you can. If your Honors please, we have attempted to draft what we think would cover the situation having to do with the question of the nonsegregated setup and that the defendants and agents and the like should be estopped from using race as a criteria.

Justice Frankfurter: Have you in your brief set forth a proposal for the kind of decree that you would like this Court to issue?

Mr. Hayes: No, your Honor, we have not.

Justice Frankfurter: Would that appeal to you or would it be agreeable to you?

* * * * *

(80) * * * They do not want to pay minimum wages, they do not want to pay this, they do not want to have that; but the law is there; they keep the attitude but they obey the law.

The same thing with income tax. Everybody is worrying now for a few days that they are going to have to pay income tax. Very few people are running around happy over it. The attitude is not good but all of them pay it. And therefore, I say, it seems to me that in this area a firm decision calling forthwith integration will be accepted and will be complied with by the South where I have lived all of my life and that thus, in spite of all their protestations and the attitude which many of them generally genuinely have, they will follow a decision of this Court just as other Americans follow the law.

Justice Reed: Mr. Nabrit, before you sit down I do not understand this language of your proposed decree, giving a choice. I have asked questions about it before.

Are you familiar with the problems of choice that came up?

Mr. Nabrit: Yes, I am and I would like to address myself for a moment if I may, to that. In the District of Columbia there is a system of administration and operation of the school which is known as the Districting Plan. Now there are different plans educationally in the United States (81) that you are familiar with. In some places, there are no districts. You just go to whatever school you want to until that school is full, and then you find another one and go to that. Baltimore has a system something like that.

In other schools they have the boundary system, the districting, and you go to the school in your district except as—and all of them have this which relates to Mr. Justice Black's question—all of them have some ground upon which they will excuse you from going to a particular school. There are many grounds of hardships, where they will do that, in the sibling case and others. In the District of Columbia, however, we have this system based upon districting. That is the basis on which the school board says children shall be assigned, and they voted a policy that it would be done, and only the hardship or necessary situation of overriding necessity would permit any departure from that.

Now that was the policy.

Justice Reed: The Board policy?

Mr. Nabrit: Yes. Now when the plan was proposed which the Board adopted, there was a difference between the policies and this plan, and it is that difference to which we call the Court's attention, that is, that in this plan which provided for this forthright imposition of the boundary or district system, there was set up inside the system, a system which provided that all of the pupils in all of the schools could (82) stay right where they were until they graduated, unless—and you should know this because this even weakens the position still further, we want you to know that—unless your remaining there prevented a student who lived in that district from getting into it.

So that takes some more of the sting out of it. But we consider that bad because, looking at the Labor Relations cases and others, where this Court has said where you have a choice regarding a union or not, here is a company union, here is another union, that the choice is not a choice. You do not have freedom of choice. And where you come out of a segregated system where everybody in the system is segregated and you say to the Negro child, sure, you have a choice and to the white child, you have got a choice, I mean that is not choice. So that we simply point it out because it goes for five years and there is nothing that we have found that indicates that at the end of the fourth year the Board would adopt another plan with that in there.

Justice Reed: That is in it—

Mr. Nabrit: I think it is on page 10 of our brief, Mr. Justice Reed. It is on page 10, No. 3 in the next to the bottom paragraph, "All pupils at present enrolled in a given school may remain until graduation provided the school is not overcrowded and provided the priority rights of pupils within the new boundaries of the school are not denied."

(83) Justice Reed: There is another angle to that same choice. In your own decree, you provided a choice.

Mr. Nabrit: Now in ours, we said, we do not deny any child the right to go to the school of his choice on the grounds of race or color within the normal limits of your districting system.

In other words, you have this districting system here. Now, we say in that system, let children go to the schools of their choice within that system.

Justice Reed: Within that district.

Mr. Nabrit: That is right.

And do not assign them on the basis of race or color, and we have no complaint. If you have some other basis, all boys, all girls, 16 or 14, any other basis, we have no objection. But just do not put in race or color as a factor. And on that basis, we do not complain. But I do not think that it will be found to help the Court very much to try

to look at a system where nothing existed by choice, and contrast it with the districting system in which there is this type of choice.

The Chief Justice: Thank you, Mr. Nabrit.

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(126) * * * We took the position that in any decree issued that says "forthwith," that normal administrative details always come into consideration, so as far as we are concerned, if the decree says "September of 1955," that will be exactly what we want.

Justice Frankfurter: I am sure you will agree in this kind of litigation, it is of the utmost importance to use language of fastidious accuracy?

Mr. Marshall: Absolutely; we agree with you fully. That is why we would rather have it say September of 1955.

The other specific point is that we believe that the Appellants in these cases, those of high school age from Prince Edward County and those of elementary and high school age of District 1 which includes Clarendon County, should be admitted as of September, 1955, and the entire class that they represent.

Justice Harlan: Mr. Marshall, on page 29 of your joint brief—

Mr. Marshall: Yes, sir.

Justice Harlan: —as I read it, you suggest as an alternative date, September 1, 1956.

Mr. Marshall: Yes, sir.

Justice Harlan: You indicate that that would be acceptable?

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REVISED STATEMENT OF POLICIES FOR SCHOOL DESEGREGATION PLANS UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

December 1966

As Amended for the School Year 1967-68

U. S. Department of Health, Education and Welfare

Office of Education

* * * * *

SUBPART A—APPLICABILITY OF THIS STATEMENT OF POLICIES

§ 181.1 *Title VI and the HEW Regulation*

Section 601 of Title VI of the Civil Rights Act of 1964 provides that:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

As required by Section 602 of Title VI, the Department of Health, Education, and Welfare has issued a Regulation to assure the elimination of discrimination in Federal aid programs it administers. The HEW Regulation was published as Part 80 of Title 45, Code of Federal Regulations (45 CFR Part 80).

§ 181.2 *Compliance by School Systems Eliminating Dual School Structure*

To be eligible for Federal aid, a school system must act to eliminate any practices in violation of Title VI, including the continued maintenance of a dual structure of separate schools for students of different races. The HEW Regulation recognizes two methods of meeting this requirement: (1) a desegregation order of a Federal court; or (2) a voluntary desegregation plan.

§ 181.3 *Purpose of This Statement of Policies*

This Statement of Policies applies to public elementary and secondary school systems undergoing desegregation to eliminate a dual school structure. It sets forth the requirements which voluntary desegregation plans must meet for the Commissioner to determine under the HEW Regulation that a plan is adequate to accomplish the purposes of Title VI. This Statement supersedes the "General Statement of Policies Under Title VI of the Civil Rights Act of 1964 Respecting Desegregation of Elementary and Secondary Schools," issued in April 1965 and published as 45 CFR Part 181, and has been amended further to make it applicable to the school year 1967-68.

§ 181.4 *Initial Demonstration of Compliance*

To be eligible for Federal aid, a school system must first assure the Commissioner that it will comply with Title VI and the HEW Regulation. It must submit the form of assurance that meets its circumstances, under §§ 181.5, 181.6, or 181.7 below.

§ 181.5 *Systems Without Dual School Structure*

(a) *Submission of Form 441.* A school system which does not maintain any characteristic of a dual school structure may initially demonstrate compliance by submitting HEW Form 441. This is an assurance of full and immediate compliance with Title VI.

(b) *Resubmission Not Required.* A school system which has appropriately submitted HEW Form 441 need not submit a new copy with subsequent requests for Federal aid, but need only affirm when requested that the assurance submitted continues in effect.

(c) *Supplementation of Assurance.* The Commissioner may require supplementation of HEW Form 441 when he has reasonable cause to believe that there is a failure to comply with any provision of Title VI or the HEW Regulation.

§ 181.6 *Systems Under Federal Court Order for Desegregation*

(a) *Submission of Order.* A school system under a Federal court desegregation order which meets the requirements of the HEW Regulation may submit, as evidence of compliance with Title VI, a copy of the court order, together with an assurance that it will comply with the order, including any future modification.

(b) *Resubmission Not Required.* A school system under a court order accepted by the Commissioner need not submit another copy, but must submit any modification not previously submitted.

(c) *Revision of Court Orders.* A school system under a court order for desegregation which is not in accord with current judicial standards is subject to legal action by the Department of Justice, or by the parties to the original suit, to modify the order to meet current standards.

§ 181.7 *Systems With Voluntary Desegregation Plans*

(a) *Submission of Form 441-B.* A school system with a voluntary desegregation plan must provide an assurance that it will abide by the applicable requirements for such plans contained in this Statement of Policies. Such assurance may be given by submitting HEW Form 441-B to the Commissioner. Commitments of funds for new activities are subject to deferral, as provided by law, for school systems with voluntary desegregation plans which have failed to submit HEW Form 441-B.

(b) *Resubmission Not Required.* A school system which has appropriately submitted HEW Form 441-B need not submit a new copy with subsequent requests for Federal aid, but need only affirm when requested that the assurance submitted continues in effect.

(c) *Changing Type of Plan.* A school system may change from one type of desegregation plan to another if such action would eliminate segregation and all other forms of discrimination more expeditiously. A school system planning to change the type of its plan must submit a

new plan meeting the requirements of this Statement of Policies, together with HEW Form 441-B, for a determination by the Commissioner as to the adequacy of the plan to accomplish the purposes of Title VI.

(d) *Retaining Present Type of Plan.* A school system with a desegregation plan accepted by the Commissioner need not resubmit its plan if it intends to continue under the same type of plan. If a plan accepted by the Commissioner fails to meet any requirement under this Statement of Policies, the submission of HEW Form 441-B will be deemed to amend the plan so that it will meet such requirement. Amendments to the plan are not to be submitted unless requested. However, certain supporting materials must be submitted, as provided in Subparts B, C, and D below.

(e) *Initial Submittal of Plans.* If no desegregation plan has been submitted or accepted for a school system, HEW Form 441-B and a plan meeting the requirements of this Statement of Policies must be submitted.

[§§ 181.8 through 181.10 reserved]

SUBPART B—BASIC REQUIREMENTS FOR ALL VOLUNTARY DESEGREGATION PLANS

§ 181.11 *Various Types of Desegregation Plans*

It is the responsibility of a school system to adopt and implement a desegregation plan which will eliminate the dual school system and all other forms of discrimination as expeditiously as possible. No single type of plan is appropriate for all school systems. In some cases, the most expeditious means of desegregation is to close the schools originally established for students of one race, particularly where they are small and inadequate, and to assign all the students and teachers to desegregated schools. Another appropriate method is to reorganize the grade structure of schools originally established for students of different races so that these schools are fully utilized, on a desegregated basis, although each school contains fewer grades. In some cases desegregation is accomplished by the estab-

lishment of non-racial attendance zones. Under certain conditions, a plan based on free choice of schools may be a way to undertake desegregation. In certain cases the purposes of Title VI may be most expeditiously accomplished by a plan applying two or more of the foregoing procedures to certain schools or different grade levels. Based on consideration of all the circumstances of a particular school system, the Commissioner may determine that its desegregation plan is not adequate to accomplish the purposes of Title VI, in which case he may require the adoption of an alternative plan. In any case where the State education agency is pursuing policies and programs for expediting the elimination of the dual school structure, the Commissioner will consider this factor in determining whether a particular type of plan is adequate for any given school system in such State.

§ 181.12 *Student Assignment Practices*

Title VI precludes a school system from any action or inaction designed to perpetuate or promote segregation or any other form of discrimination, or to limit desegregation or maintain what is essentially a dual school structure. Any educational opportunity offered by a school system must be available to students without regard to race, color, or national origin. In particular, any academic tests or other procedures used in assigning students to schools, grades, classrooms, sections, courses of study or for any other purpose must be applied uniformly to all students without regard to race, color, or national origin. Curriculum, credit and promotion procedures must not be applied in such a way as to penalize or hamper students who transfer from one school to another pursuant to a desegregation plan.

§ 181.13 *Faculty and Staff*

(a) *Desegregation of Staff.* The racial composition of the professional staff of a school system, and of the schools in the system, must be considered in determining whether students are subjected to discrimination in edu-

cational programs. Each school system is responsible for correcting the effects of all past discriminatory practices in the assignment of teachers and other professional staff.

(b) *New Assignments.* Race, color, or national origin may not be a factor in the hiring or assignment to schools or within schools of teachers and other professional staff, including student teachers and staff serving two or more schools, except to correct the effects of past discriminatory assignments.

(c) *Dismissals.* Teachers and other professional staff may not be dismissed, demoted, or passed over for retention, promotion, or rehiring, on the ground of race, color, or national origin. In any instance where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system may be filled through recruitment from outside the system unless the school officials can show that no such displaced staff member is qualified to fill the vacancy. If as a result of desegregation, there is to be a reduction in the total professional staff of the school system, the qualifications of all staff members in the system must be evaluated in selecting the staff members to be released.

(d) *Past Assignments.* The pattern of assignment of teachers and other professional staff among the various schools of a system may not be such that schools are identifiable as intended for students of a particular race, color, or national origin, or such that teachers or other professional staff of a particular race are concentrated in those schools where all, or the majority, of the students are of that race. Each school system has a positive duty to make staff assignments and reassignments necessary to eliminate past discriminatory assignment patterns. Staff desegregation for the 1967-68 school year must include significant progress beyond what was accomplished for the 1966-67 school year in the desegregation of teachers assigned to schools on a regular full-time basis. Patterns of staff assignment to initiate staff desegregation might include, for example: (1) Some desegregation of professional staff in

each school in the system, (2) the assignment of a significant portion of the professional staff of each race to particular schools in the system where their race is a minority and where special staff training programs are established to help with the process of staff desegregation, (3) the assignment of a significant portion of the staff on a desegregated basis to those schools in which the student body is desegregated, (4) the reassignment of the staff of schools being closed to other schools in the system where their race is a minority, or (5) an alternative pattern of assignment which will make comparable progress in bringing about staff desegregation successfully.

§ 181.14 *Services, Facilities, Activities, and Programs*

(a) *General.* Each school system is responsible for removing any segregation and any other form of discrimination affecting students in connection with all services, facilities, activities and programs (including transportation, athletics, and other extra-curricular activities) that may be conducted or sponsored by or affiliated with the schools of the system.

(b) *Specific Situations.*

(1) A student attending school for the first time on a desegregated basis may not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer student.

(2) If transportation services are furnished, sponsored or utilized by a school system, dual or segregated transportation systems and any other form of discrimination must be eliminated. Routing and scheduling of transportation must be planned on the basis of such factors as economy and efficiency, and may not operate to impede desegregation. Routes and schedules must be changed to the extent necessary to comply with this provision.

(3) All school-related use of athletic fields, meeting rooms, and all other school-related services, facilities,

activities, and programs, such as commencement exercises and parent-teacher meetings, which are open to persons other than enrolled students, must be open to all such persons and must be conducted without segregation or any other form of discrimination.

(4) All special educational programs, such as preschool, summer school and adult education, and any educational program newly instituted, must be conducted without segregation or any other form of discrimination. Free choice desegregation procedures normally may not be applied to such programs.

§ 181.15 *Unequal Educational Programs and Facilities*

In addition to the changes made in student assignment practices under its desegregation plan, each school system is responsible for removing all other forms of discrimination on the ground of race, color, or national origin. For example, some school systems still maintain small, inadequate schools that were originally established for students of a particular race and are still used primarily or exclusively for the education of students of such race. If the facilities, teaching materials, or educational program available to students in such a school are inferior to those generally available in the schools of the system, the school authorities will normally be required immediately to assign such students to other schools in order to discontinue the use of the inferior school.

§ 181.16 *Attendance Outside School System of Residence*

No arrangement may be made nor permission granted for students residing in one school system to attend school in another school system in any case (1) where the result would tend to limit desegregation or maintain what is essentially a dual school structure in either system, or (2) where such attendance is not available to all students without regard to race, color, or national origin.

§ 181.17 *Official Support for Desegregation Plan*

(a) *Community Support.* School officials must take steps to encourage community support and acceptance of their desegregation plan. They are responsible for preparing students, teachers and all other personnel, and the community in general, for the successful desegregation of the school system.

(b) *Information to the Public.* Full information concerning the desegregation plan must be furnished freely to the public and to all television and radio stations and all newspapers serving the community. Copies of all reports on student and staff assignments required under § 181.18 below must be available for public inspection at the office of the Superintendent of the school system.

(c) *Protection of Persons Affected.* Each school system is responsible for the effective implementation of its desegregation plan. Within their authority, school officials are responsible for the protection of persons exercising rights under, or otherwise affected by, the plan. They must take appropriate action with regard to any student or staff member who interferes with the successful operation of the plan, whether or not on school grounds. If officials of the school system are not able to provide sufficient protection, they must seek whatever assistance is necessary from other appropriate officials.

§ 181.18 *Reports*

(a) *Anticipated Enrollment.* By April 15 of each year, or by 15 days after the close of the choice period in the case of plans based on free choice of schools, each school system must report to the Commissioner the anticipated student enrollment, by race, color, or national origin, and by grade of each school, for the following school year. Any subsequent substantial change in anticipated enrollment affecting desegregation must be reported promptly to the Commissioner.

(b) *Planned Staff Assignments.* By April 15 of each year, each school system must report to the Commissioner

the planned assignments of professional staff to each school for the following year, by race, color, or national origin and by grade, or where appropriate, by subject taught or position held. Any subsequent change in planned staff assignments affecting staff desegregation must be reported promptly to the Commissioner.

(c) *Actual Data.* As soon as possible after the opening of its schools in the fall, but in any case within 30 days thereafter, each school system must determine and promptly report to the Commissioner the actual data for the items covered in the reports called for under (a) and (b) above.

(d) *Attendance Outside System of Residence.* The reports called for under (a) and (c) above must include a statement covering (1) all students who reside within the boundaries of the school system but attend school in another system, and (2) all students who reside outside but attend a school within the system. This statement must set forth, for each group of students included in (1) and (2) above, the number of students, by race, color, or national origin, by grade, by school and school system attended, and by school system of residence.

(e) *Consolidation or Litigation.* A school system which is to undergo consolidation with another system or any other change in its boundaries, or which is involved in any litigation affecting desegregation, must promptly report the relevant facts and circumstances to the Commissioner.

(f) *Other Reports.* The Commissioner may require a school system to submit other reports relating to its compliance with Title VI.

§ 181.19 *Records*

A school system must keep available for not less than three years all records relating to personnel actions, transportation, including routes and schedules, and student assignments and transfers, including all choice forms and transfer applications submitted to the school system. The

Commissioner may require retention for a longer period in individual cases.

[§§ 181.20 through 181.30 reserved]

SUBPART C—ADDITIONAL REQUIREMENTS FOR VOLUNTARY DESEGREGATION PLANS BASED ON GEOGRAPHIC ATTENDANCE ZONES

§ 181.31 *General*

A voluntary desegregation plan based in whole or in part on geographic attendance zones must meet the requirements of this Subpart for all students whose assignment to schools is determined by such zones. The general requirement for desegregation plans set forth elsewhere in this Statement of Policies are also applicable.

§ 181.32 *Attendance Zones*

A single system of non-racial attendance zones must be established. A school system may not use zone boundaries or feeder patterns designed to perpetuate or promote segregation, or to limit desegregation or maintain what is essentially a dual school structure. A school system planning (1) to desegregate certain grades by means of geographic attendance zones and other grades by means of free choice of schools, or (2) to include more than one school of the same level in one or more attendance zones and to offer free choice of all schools within such zones, must show that such an arrangement will most expeditiously eliminate segregation and all other forms of discrimination. In any such case, the procedures followed for the offer, exercise and administration of free choice of schools must conform to the provisions of Subpart D below.

§ 181.33 *Assignment to School in Zone of Residence*

Regardless of any previous attendance at another school, each student must be assigned to the school serving his zone of residence, and may be transferred to another school only in those cases which meet the following requirements:

(a) *Transfer for Special Needs.* A student who requires a course of study not offered at the school serving his zone, or who is physically handicapped, may be permitted, upon his written application, to transfer to another school which is designed to fit, or offers courses for, his special needs.

(b) *Minority Transfer Policy.* A school system may (1) permit any student to transfer from a school where students of his race are a majority to any other school, within the system, where students of his race are a minority, or (2) assign students on such basis.

(c) *Special Plan Provisions.* A student who specifically qualifies to attend another school pursuant to the provisions of a desegregation plan accepted by the Commissioner may be permitted, upon his written application, to transfer to such other school.

§ 181.34 *Notice*

(a) *Individual Notice.* On a convenient date between March 1 and April 30 in each year, each school system must distribute, by first class mail, a letter to the parent, or other adult person acting as parent, of each student who is then enrolled, except high school seniors expected to graduate, giving the name and location of the school to which the student has been assigned for the coming school year pursuant to the desegregation plan, and information concerning the bus service between his school and his neighborhood. All these letters must be mailed on the same day. Each letter must be accompanied by a notice, in a form prescribed by the Commissioner, explaining the desegregation plan. The same letter and notice must also be furnished, in person or by mail, to the parent of each prospective student, including each student planning to enter the first grade or kindergarten, as soon as the school system learns that he plans to enroll.

(b) *Published Notice.* The school system must arrange for the conspicuous publication of an announcement,

identical with the text of the notice provided for under (a) above, in the newspaper most generally circulated in the community, on or shortly before the date of mailing under (a) above. Publication as a legal notice is not sufficient. Whenever any revision of attendance zones is proposed, the school system must similarly arrange for the conspicuous publication of an announcement at least 30 days before any change is to become effective, naming each school to be affected and describing the proposed new zones. Copies of all material published hereunder must also be given at that time to all television and radio stations serving the community.

(c) *Maps Available to Public.* A street or road map showing the boundaries of, and the school serving, each attendance zone must be freely available for public inspection at the office of the Superintendent. Each school in the system must have freely available for public inspection a map showing the boundaries of its attendance area.

§ 181.35 *Reports*

(a) *Attendance Zones.* The report submitted under § 181.18(a) by April 15 of each year must be accompanied by a map, which must show the name and location of each school facility planned to be used during the coming school year, the attendance zones for each school in effect during the current school year, and any changes in the attendance zones planned for the coming school year. The map need not be of professional quality. A clipping of each newspaper announcement and any map published under § 181.34 (b) or (c) above must be sent to the Commissioner within three days after publication and, in the case of proposed revisions, must be accompanied by data showing the estimated change in attendance, by race, color, or national origin and by grade, and in the racial composition of the professional staff, at each school to be affected.

(b) *Attendance Outside Zone of Residence.* Whenever a student is permitted to attend a school other than

that serving his zone of residence, and whenever a request for such attendance is denied, the school system must retain records showing (1) the school and grade applied for, (2) the zone of the student's residence and his grade therein, (3) the race, color, or national origin of the student, (4) the reason stated for the request, and (5) the reason the request is granted or denied. Whenever the total number of transfers permitted from any school exceeds two percent of the student enrollment at that school, the relevant facts must be reported promptly to the Commissioner.

[§§ 181.36 through 181.40 reserved]

SUBPART D—ADDITIONAL REQUIREMENTS FOR VOLUNTARY DESEGREGATION PLANS BASED ON FREE CHOICE OF SCHOOLS

§ 181.41 *General*

A voluntary desegregation plan based in whole or in part on free choice of schools must meet the requirements of this Subpart for all students whose assignment to schools is determined by free choice. The general requirements for desegregation plans set forth elsewhere in this Statement of Policies are also applicable.

§ 181.42 *Who May Exercise Choice*

A choice of schools may be exercised by a parent or other adult person serving as the student's parent. A student may exercise his own choice if he (1) is exercising a choice for the ninth or a higher grade, or (2) has reached the age of fifteen at the time of the exercise of choice. Such a choice by a student is controlling unless a different choice is exercised for him by his parent, or other adult person acting as his parent, during the period in which the student exercises his choice. Each reference in this Subpart to a student exercising a choice means the exercise of the choice by a parent or such other adult, or by the student himself, as may be appropriate under this provision.

§ 181.43 *Annual Mandatory Exercise of Choice*

Each student must be required to exercise a free choice of schools once annually. A student may not be enrolled or assigned to a school without exercising his choice, except as provided in § 181.45 below.

§ 181.44 *Choice Period*

A period of at least 30 days must be provided for exercising choice, to commence no earlier than January 1 and to end no later than April 30, preceding the school year for which choice is to be exercised. The Commissioner may require an additional period or different dates for a particular school system. No preference in school assignment may be given on the basis of an early exercise of choice during the choice period.

§ 181.45 *Failure to Exercise Choice*

A failure to exercise a choice within the choice period does not excuse a student from exercising his choice, which may be done at any time before he commences school for the year with respect to which the choice applies. However, any such late choice must be subordinated to the choices of students who exercised choice during the choice period. If by a week after school opens there is any student who has not yet exercised his choice of school, he must be assigned to the school nearest his home where space is available. Standards for determining available space must be applied uniformly throughout the system.

§ 181.46 *Letters to Parents, Notices, and Choice Forms*

(a) *Mailings.* On the first day of the choice period, each school system must distribute, by first class mail, a letter, an explanatory notice, and a choice form, to the parent or other adult person acting as parent of each student who is then enrolled, except high school seniors expected to graduate, together with a return envelope addressed to the Superintendent. The texts for the letter,

notice, and choice form to be used must be in a form prescribed by the Commissioner.

(b) *Extra Copies.* Extra copies of the letter, the notice, and the choice form must be freely available to parents, students, prospective students, and the general public, at each school in the system and at the office of the Superintendent.

(c) *Content of Choice Form.* Unless otherwise authorized or required by the Commissioner, each choice form, as prepared by the school system for distribution, (1) must set forth the name and location of, and the grades offered at, each school, and (2) may inquire of the person exercising the choice only the name, address, and age of the student, the school and grade currently or most recently attended by the student, the school chosen, the signature of one parent or other adult person serving as parent or, where appropriate under § 181.42 above, the signature of the student, and the identity of the person signing. If necessary to provide information required by §§ 181.18 and 181.19 above, or for other reports required by the Commissioner, the choice form may also ask the race, color, or national origin of the student. No statement of reasons for a particular choice, or any other information, or any witness or other authentication, may be required or requested. No other choice form, including any pupil placement law form may be used by the school system in connection with the choice of a school.

(d) *Return of Choice Form.* At the option of the person completing the choice form, it may be returned by mail or by hand to any school in the school system or to the office of the Superintendent.

(e) *Choices Not on Official Form.* Exercise of choice may also be made by the submission in like manner of any other writing which sufficiently identifies the student and indicates that he has made a choice of a school.

§ 181.47 *Prospective Students*

Each prospective student, including each student planning to enter the first grade or kindergarten, must be required to exercise a free choice of schools before enrollment. Each such student must be furnished a copy of the prescribed letter, notice, and choice form, by mail or in person, on the date the choice period opens or as soon thereafter as the school system learns that he plans to enroll. Each must be given an opportunity to exercise his choice during the choice period. A prospective student exercising his choice after the choice period must be given at least one week to do so.

§ 181.48 *Choice May Not Be Changed*

Once a choice has been submitted, it may not be changed for the school year to which it applies, whether during the choice period, after the choice period, or during that school year, except on request (1) in cases meeting the conditions set forth in § 181.50 below, (2) in case of a change of residence to a place where another school serving the student's grade level is closer than the school to which he is assigned under these provisions, and (3) in case of a compelling hardship. A student who cannot enter the school of his choice because the grade he is to enter is not offered at that school must be promptly notified as soon as this is known and must be given the same opportunity to choose another school as is provided a prospective student under § 181.47 above.

§ 181.49 *Assignment According to Choice*

No choice may be denied in assigning students to schools for any reason other than overcrowding. In cases where overcrowding would result at one or more schools from the choices made, preference must be given on the basis of the proximity of schools to the homes of students, without regard to race, color, or national origin. No preference may be given to students for prior attendance at a school if such preference would deny other students their

free choice of schools under the plan. In cases where this provision would result in unusual difficulty involving, for instance, students not being able to finish their senior year in a particular school, or students being unable to attend school with other members of the same family, or at a school having special courses required by a student, the relevant facts may be brought to the attention of the Commissioner for consideration of alternative procedures. Any student whose choice is denied under these provisions must be notified in writing promptly and given his choice of each school in the system serving his grade level where space is available. Standards for determining overcrowding and available space that are applied uniformly throughout the system must be used if any choice is to be denied. Each student and his parent, or other adult person acting as parent, must be notified in writing of the name and location of the school to which the student is assigned hereunder, promptly upon completion of processing his first or any second choice. A school system may, at its option, give preference to any student whose choice is for a school at which students of his race are a minority.

§ 181.50 *Transfers for Special Needs*

Each student must attend the school to which he is assigned under the foregoing provisions, except that any student who requires a course of study not offered at that school, or who is physically handicapped, may be permitted, upon his written application, to transfer to another school which is designed to fit, or offers courses for, his special needs.

§ 181.51 *No Limitation of Choice; Transportation*

No factor, such as a requirement for health or birth records, academic or physical examinations, the operation of the school transportation system, or any other factor except overcrowding, may limit or affect the assignment of students to schools on the basis of their choices. Where transportation is generally provided, buses must be routed to the maximum extent feasible so as to serve each student

choosing any school in the system. In any event, every student choosing either the formerly white or the formerly Negro school (or other school established for students of a particular race, color, or national origin) nearest his residence must be transported to the school to which he is assigned under these provisions, whether or not it is his first choice, if that school is sufficiently distant from his home to make him eligible for transportation under generally applicable transportation rules.

§ 181.52 *Officials Not To Influence Choice*

No official, teacher, or employee of the school system may require or request any student or prospective student to submit a choice form during the choice period other than by the prescribed letter, notice, and choice form. After the choice period, the school system must make all reasonable efforts to obtain a completed choice form from any student who has not exercised a choice. However, at no time may any official, teacher, or employee of the school system, either directly or indirectly, seek to influence any parent, student, or any other person involved, in the exercise of a choice, or favor or penalize any person because of a choice made. Information concerning choices made by individual students or schools to which they are assigned may not be made public.

§ 181.53 *Public Notice*

On or shortly before the date the choice period opens, the school system must arrange for the conspicuous publication of a notice describing the desegregation plan in the newspaper most generally circulated in the community. The text of the notice must be in a form prescribed by the Commissioner. Publication as a legal notice is not sufficient. Copies of this notice must also be given at that time to all radio and television stations serving the community. Any other announcement published by the school system concerning enrollment, such as might be made in connection with scheduling pre-enrollment procedures for prospective first grade students, must (1) state clearly

that under the desegregation plan a choice of school is required for each student whose choice has not yet been exercised, (2) describe and state where copies of the prescribed letter, notice and choice form may be freely obtained in person, or by letter or telephone request, and (3) state the period during which the choice may be exercised.

§ 181.54 *Requirements for Effectiveness of Free Choice Plans*

A free choice plan tends to place the burden of desegregation on Negro or other minority group students and their parents. Even when school authorities undertake good faith efforts to assure its fair operation, the very nature of a free choice plan and the effect of longstanding community attitudes often tend to preclude or inhibit the exercise of a truly free choice by or for minority group students.

For these reasons, the Commissioner will scrutinize with special care the operation of voluntary plans of desegregation in school systems which have adopted free choice plans.

In determining whether a free choice plan is operating fairly and effectively, so as to materially further the orderly achievement of desegregation, the Commissioner will take into account such factors as community support for the plan, the efforts of the school system to eliminate the identifiability of schools on the basis of race, color, or national origin by virtue of the composition of staff or other factors, and the progress actually made in eliminating past discrimination and segregation.

The single most substantial indication as to whether a free choice plan is actually working to eliminate the dual school structure is the extent to which Negro or other minority group students have in fact transferred from segregated schools. Thus, when substantial desegregation actually occurs under a free choice plan, there is strong evidence that the plan is operating effectively and fairly, and is currently acceptable as a means of meeting legal re-

quirements. Conversely, where a free choice plan results in little or no actual desegregation, or where, having already produced some degree of desegregation, it does not result in substantial progress, there is reason to believe that the plan is not operating effectively and may not be an appropriate or acceptable method of meeting constitutional and statutory requirements.

As a general matter, for the 1967-68 school year the Commissioner will, in the absence of other evidence to the contrary, assume that a free choice plan is a viable and effective means of completing initial stages of desegregation in school systems in which a substantial percentage of the students have in fact been transferred from segregated schools. Where a small degree of desegregation has been achieved and, on the basis of the free choice registration held in early 1967, it appears that there will not be a substantial increase in desegregation for the 1967-68 school year, the Commissioner will review the working of the plan and will normally require school officials to take additional actions as a prerequisite to continued use of a free choice plan, even as an interim device.

In districts with a sizable percentage of Negro or other minority group students, the Commissioner will, in general, be guided by the following criteria in scheduling free choice plans for review:

(1) If a significant percentage of the students, such as 8 percent or 9 percent, transferred from segregated schools for the 1966-67 school year, total transfers on the order of at least twice that percentage would normally be expected.

(2) If a smaller percentage of the students, such as 4 percent or 5 percent, transferred from segregated schools for the 1966-67 school year, a substantial increase in transfers would normally be expected, such as would bring the total to at least triple the percentage for the 1966-67 school year.

(3) If a lower percentage of students transferred for the 1966-67 school year, then the rate of increase in total transfers for the 1967-68 school year would normally be

expected to be proportionately greater than under (2) above.

Where there is substantial deviation from these expectations, and the Commissioner concludes, on the basis of the choices actually made and other available evidence, that the plan is not operating fairly, or is not effective to meet constitutional and statutory requirements, he will require the school system to take additional steps to further desegregation.

Such additional steps may include, for example, reopening of the choice period, additional meetings with parents and civic groups, further arrangements with State or local officials to limit opportunities for intimidation, and other further community preparation. Where schools are still identifiable on the basis of staff composition as intended for students of a particular race, color, or national origin, such steps must in any such case include substantial further changes in staffing patterns to eliminate such identifiability.

If the Commissioner concludes that such steps would be ineffective, or if they fail to remedy the defects in the operation of any free choice plan, he may require the school system to adopt a different type of desegregation plan.

§ 181.55 *Reports*

(a) *Supporting Materials.* Each school system must submit to the Commissioner a copy of the letter, notice, and choice form, all as prepared by the school system for distribution, within three days after their first distribution, and must submit a clipping of all newspaper announcements published in accordance with § 181.53 above within three days after publication.

(b) *Data on Choices Not Being Honored.* In any case, including the case of conflicting choices under § 181.42 above, where a student chooses a school where he would be in a racial minority, and (1) he is to be assigned to a school where he would be in a racial majority, or (2) the school system proposes not to process his choice for

any reason, the relevant facts must be reported promptly to the Commissioner.

(c) *Transfers for Special Needs.* Wherever a student is permitted, under §§ 181.48 or 181.50 above, to attend a school other than the school to which he is or would be assigned under the other applicable provisions hereof, and whenever a request for such attendance is denied, the school system must retain records showing (1) the school and grade applied for, (2) the school and grade to be transferred from, (3) the race, color, or national origin of the student, (4) the reason stated for the request, and (5) the reason the request is granted or denied. Whenever the total number of transfers permitted from any school exceeds two percent of the student enrollment at that school, the relevant facts must be reported promptly to the Commissioner.

[§§ 181.56 through 181.60 reserved]

SUBPART E—MISCELLANEOUS PROVISIONS

§ 181.61 *How To Submit Reports*

Each report to the Commissioner required under this Statement of Policies must be sent by first class mail addressed to the Equal Educational Opportunities Program, U.S. Office of Education, Washington, D.C., 20202.

§ 181.62 *Alternative Administrative Procedures*

If an administrative procedure provided for under this Statement of Policies is not administratively feasible in a particular situation, the Commissioner may accept an alternative procedure if he determines that it will accomplish the same purpose.

§ 181.63 *Revision of Statement of Policies*

The Commissioner may modify this Statement of Policies as may be necessary to accomplish the purposes of Title VI.

§ 181.64 *Copies of Documents for State Agencies*

Each school system submitting any plan form or report to the Commissioner under this Statement of Policies must also submit a copy of such form or report to the appropriate State education agency.

§ 181.65 *Definitions*

As used in this part,

(a) The term "Commissioner" means the U.S. Commissioner of Education or any official acting under assignment or delegation from him to carry out any of his functions under this Statement of Policies.

(b) The term "discrimination" means discrimination on the ground of race, color, or national origin.

(c) The term "dual school structure" means a system of separate school facilities for students based on race, color, or national origin.

(d) The term "HEW Form 441" means the printed document provided for the use of certain school systems by the U.S. Department of Health, Education, and Welfare, entitled "Assurance of Compliance with the Department of Health, Education, and Welfare Regulation under Title VI of the Civil Rights Act of 1964."

(e) The term "HEW Form 441-B" means the printed document provided for the use of certain school systems by the U.S. Department of Health, Education, and Welfare entitled "Assurance of Compliance with the Revised Statement of Policies for School Desegregation Plans Under Title VI of the Civil Rights Act of 1964."

(f) The term "HEW Regulation" means the Regulation issued pursuant to Title VI of the Civil Rights Act of 1964 by the U.S. Department of Health, Education, and Welfare (Part 80, of Title 45, Code of Federal Regulations).

(g) The term "parent" means an adult individual who exercises parental control over, or is otherwise acting as parent of, a student or prospective student.

(h) The term "school official" shall include, but is not limited to, any person who serves on the governing board of a school system, or attends meetings of such board in an official capacity, and all administrative and supervisory personnel of a school system.

(i) The term "school system" means, as the context may require, either (1) a legally constituted school authority (such as a local board of education) which has administrative control of one or more elementary or secondary schools, (2) the geographic area over which any such school authority has administrative control for school purposes, or (3) the schools and facilities over which any such school authority has administrative control.

(j) The term "Statement of Policies" means this Revised Statement of Policies for School Desegregation Plans under Title VI of the Civil Rights Act of 1964.

(k) The term "Title VI" means Title VI of the Civil Rights Act of 1964 (PL 88-352, 42 USC 2000d to 2000d-4).

[§§ 181.66 to 181.70 reserved]

In the Supreme Court of the United States

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OCTOBER TERM, 1967
NO. 740

BRENDA K. MONROE, *et al.*,
Petitioners,

v.

BOARD OF COMMISSIONERS OF THE CITY OF JACKSON, TENNESSEE, etc.,
Respondents.

SUPPLEMENT TO APPENDIX TO RESPONDENTS' BRIEF

RUSSELL RICE, SR.,
215 East Main Street,
Jackson, Tennessee 38301,
Attorney for Respondents.

McCOWAT-MERCER PRESS, JACKSON, TENNESSEE

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THEY ARE NOT SO MUCH ANTI-NEGRO AS PRO-MIDDLE CLASS

By John Finley Scott and Lois Heyman Scott*

(from the New York "Times," March 24, 1968, page 46)

The record of programs for social reform shows, alas, frequent unintended and undesired results. Reformers are usually quite clear about the nature of the evil they want to end, much less clear about how to end it. One reason for this is the premise that an evil is always caused by another evil, never by anything good. But analysis usually shows that an evil condition is more complex than such a purely moral perspective implies. And this suggests that a simple cure will be unlikely and raises the further question of whether any cure will be worth its cost. Analysis of such social "evils" as illegitimacy, crime or social inequality shows each to be linked to other conditions, both good and evil.

In the 13 years since racial segregation *de jure* was outlawed by the Supreme Court, the problem of segregation *de facto* has proved stubborn and complex. Millions have been spent to integrate American schools, but the results so far are discouraging. Militant advocates now call for redoubled effort, and they are joined by the President's National Advisory Commission on Civil Disorders with its recent recommendations for "sharply increased efforts to eliminate *de facto* segregation in our schools." Yet in the present situation, plans to integrate schools are likely to fail in proportion to the resources marshaled behind them,

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and to cause more segregation and worse education for subordinated racial groups than would otherwise occur.

The problem is that the evil of *de facto* segregation is sustained by a number of factors, at least one of which — parents' concern for what they judge to be the welfare of their children — is conventionally regarded as an important social good. Because programs for integration are part of a highly moral crusade, the implication of this parental concern is overlooked. But when it is analyzed in connection with other factors, it appears that the drive for rapid integration will fail, and that the means for improving education for black Americans within the context of *de facto* segregation deserve more attention. They deserve it not because they are more just, but because they are more likely to succeed.

Americans are racists. They persistently and invidiously distinguish among groups on the basis of genetic traits that evidently have nothing to recommend them except ready observability. American racism is, to be sure, relatively mild (especially compared to what it was in 1900) and highly variable within the society. But it is a widespread attitude and one that Americans share with most of the world's technologically advanced societies — including many that did not share in the Western European conquest of various nonwhite populations. No program for improving the lot of subordinated racial groups in America will succeed if it depends on the notion that racism is not a popular attitude but only the prejudice of a small and conspiratorial minority made up of Southern Senators, suburban school boards and metropolitan policemen. For the Senators voice the virulent racism of several million Southern whites, the school boards represent millions of white parents who fear

that integration will compromise their children's education, and the policemen nicely express the sentiments of the strongly rooted urban groups from which they are usually recruited.

The hope for more egalitarian race relations in this country rests more securely on the fact that American racism is qualified and limited. Americans who are racists in some areas will support racial equality in others. A man who opposes "open housing" legislation because he fears for his neighborhood may still support antidiscrimnnation measures in voting or employment. White voters have recently helped elect Chinese Senators and black mayors.

Most racial antipathy in America is not "pure" racism but derives from the disdain of higher classes for those below them. The tragedy of race in this country (and many others) is that visible genetic differences, superficial in themselves, have become generally reliable clues to a person's class position—his education, his income, his manners. The present low position of black Americans is a legacy of centuries of living under a most extreme and brutal form of slavery and of strenuous efforts since legal emancipation to contain them socially as a subordinated caste. Events of the last 20 years have done much to modify the legal and political aspects of this subordination, but the more general social effects of the past remain: black Americans are disadvantaged and poor, and their culture—so much a "culture of poverty"—is offensive to more affluent classes.

Advocates of integration frequently note that interracial contacts in housing and schools are less strained when both racial groups are reasonably well educated and "middle class," and they suggest that this provides the key to successful integration. But the number of middle-class blacks, though growing,

remains small, and as Christopher Jencks, of the Institute for Policy Studies in Washington, has pointed out, there just aren't enough of them to go round. Since the majority of whites today are broadly in the middle class, this means that most programs for quick integration by race must also involve integration by class. And the long-run problems of achieving genuine educational integration by class are vastly greater than those of genuine integration by race.

It is possible today to marshal evidence that racial attitudes are changing rapidly. But these are highly imperfect measures of behavior. It is the concrete action of white parents that will cause school-integration campaigns to succeed or fail, not what they say about the abstract rights of black Americans when their own interests are not at stake. People learn fashionable circumlocutions far faster than they change their habits. New York mothers exist who recite liberal platitudes in one breath and in the next declare that "New York City schools are simply impossible," which is why they are moving to Scarsdale. They remain tactfully vague about why the schools are impossible. In some respects racist sentiments may have hardened. Open-housing legislation, which not long ago had widespread support, is today something that few local candidates for public office can afford to endorse. Although the Senate has now included open-housing provisions in the new civil-rights bill, they are largely ineffectual or unenforceable for most housing, and the final legislation as it ultimately clears Congress probably will accomplish even less.

In the long run, American racism is probably waning. But the impatience of antiracists with ancient injustice, the penchant for provocative and dramatic confrontations — in education and elsewhere — may

ironically give the old myths of racism a new lease on life.

The special difficulty in programs for school integration is that they affect members of the dominant white group in a most sensitive part of their lives; that is, they affect the family, especially in its universal function of defining the social position of children. In Western societies all members of a family are commonly judged to occupy the same social class, regardless of age or sex. Parents desire to pass on to their children a status at least as good as their own. This makes the family the most conservative of all social institutions, the slowest to change in an otherwise rapidly changing society. In America today we may have parents who are liberals, yet a "liberal parent" is almost a contradiction in terms.

The behavior of professors as parents illustrates this well. Often strong advocates of equality, in the case of their own children they want what Everett Hughes, the Brandeis University sociologist, has called "equality—plus." They generally do what they can to give their children an elite education of the kind their own occupation requires, and this proves difficult in class-heterogeneous schools. Academic parents become distressed when sons learn hot-rod culture and neglect physics and English composition and when daughters threaten to marry angry young men who show no interest in college. The ideal is a small, homogeneous and "sophisticated" school, where liberal values are taught in the abstract, with exemplary but token integration of students and not enough real heterogeneity to interfere with the learning of skills essential to an educational elite.

American society, like all industrial societies, is rapidly changing, so that new opportunities for social advancement are constantly created and old elites

deposed. Social change is the greatest enemy of familial inheritance and increases the burden of parental responsibility. Thus families concentrate on providing their offspring with training that will give them an advantage in the otherwise relatively open competition for valued positions in society. This is why the class position of a child's family is such a good predictor of his score on any standard test of "educational achievement," as a recent United States Office of Education report by James Coleman entitled "Equality of Educational Opportunity," showed on a very large scale.

As competition for valued positions becomes more and more open, the selection of environments and schools that will aid in establishing status becomes more and more important. The middle-class white parent's fear of the impact of interracial contacts on his children's training does not depend simply on an unlettered racist belief that black children are "inherently" stupid or immoral, although this may play some part. He is fearful mainly because society is stratified because parents are anxious to pass on their stratified status, and because most black children are poor.

One good place to learn about the behaviour of Americans (rather than their verbal professions) in regard to integrated education is in the housing market. When we study attitudes we often end up recording platitudes. But in the housing market money does the talking. Money is very sincere, and a visit to a real-estate broker's office can be highly informative.

In the broker's office the walls are usually covered with maps. These show city streets, land-use zoning and school districts. Though many are colorful and expensively printed, they are not there because they are decorative. They are there because they provide needed information. The builder of speculative apartments, for example, wants to know where the zoning

law permits their construction; the parents of school-age children want to know the boundaries of "good" school districts.

Because such parents constitute the large majority of all buyers of single-family residences, the character of the school that serves a given residence becomes an important part of its value. This becomes quite clear after the most cursory interviews with real-estate brokers and a comparison of prices. As one broker we interviewed put it, "You don't just buy the house, you buy the school district." In cities with a Catholic school system, the broker will need two sets of school-district maps, public and parochial, for each map serves a different market. Houses that cannot be sold to Protestants because the public school has "too many" black students can still be sold to Catholics, who will send their children to the parochial schools. It is true that the church welcomes black Catholic children to its schools, and in some cases non-Catholic black children as well, but in most places there are very few of them to welcome.

Two cases illustrate the effect of school districts on white housing demand. In Seattle, residential districts are remarkably heterogeneous, mainly because of a complex geography that provides many lakefront and scenic sites. Some prime locations are in largely black school districts; others in white ones. Two areas belonging to a largely black school district contain well-sited middle-class houses, but prices for these are substantially lower than the prices of similarly sited houses in a third area where the lots are smaller and upwind from a garbage dump. The difference is that the third area belongs to a lily-white school district with (in the words of a district mother) "lots of children of professional people for our kids to associate with."

A recent proposal in Berkeley, Calif., to transport black children from "flat" to "hill" schools not only sparked a school-board recall campaign but noticeably softened the demand for residential property in the "Berkeley hills"—the home of most of the conspicuously liberal faculty of the University of California. Across the municipal (and school district) border in El Cerrito, in similar locations, there was no softening of demand. El Cerrito has the advantage for anxious white parents of being "all hill" and "no flat." Most of its homes are priced beyond the financial capacity of black parents.

The amount that white buyers will discount otherwise attractive houses in "polluted" public school districts tends to be limited by the cost of alternate private-school tuition for their children. This pattern is well-established in neighborhoods of expensive older homes in Eastern cities and is very clear in New York City's tight housing market. In Seattle one of the highest-income residential areas is near the most integrated public high school, but its affluent parents send their children to conveniently situated (and thriving) private schools.

Residential segregation is linked to school segregation through the "neighborhood school." Before educational policy became preoccupied with integration, the system of neighborhood schools eliminated the problem of transportation. With schools widely dispersed, children could get to them by walking short distances. It was, and is, a practical arrangement, economical for schools and popular with parents, quite apart from the fact that neighborhood schools reinforce the class system.

Because of its key role in *de facto* segregation, militant integrationists have attacked the neighborhood-school concept and have discovered that it com-

mands widespread social support. For one thing, integrationists have tended to assume that segregated neighborhoods produce segregated schools. But in view of the strong white demand for status-reinforcing schools, it is also true that segregated schools produce segregated neighborhoods, not because black families are simply barred by covenants from buying in certain neighborhoods (although they certainly were barred in many cases until 1948, when the Supreme Court nullified racially restrictive covenants to property titles), but because demand by the vastly more affluent whites bids up prices in many areas beyond what all but a tiny minority of blacks can pay. Insofar as white parents have made substantial investments in property partly because they presumed their children would attend a particular school, they are disposed to defend existing arrangements with political craft and power.

Changing the distribution of students among schools has proved to be difficult enough within individual school districts and municipal jurisdictions. It is much harder when whole school districts become the units of segregation, as they are indeed becoming in many metropolitan areas composed of white suburbs and a largely black central city.

Often the suburbs are Balkanized into a patchwork of small municipal governments, each jealous of its petty sovereignty, proud of its middle-class residential character, resistant to involvement in problems affecting the metropolitan area as a whole. This resistance is widely regarded as a major problem of American government, and if those who recommend interdistrict integration are to succeed, they will have to overcome it where many far less controversial programs have failed. Where concrete proposals for merging metropolitan and suburban school districts or for

busing more than token numbers of black children have been presented to the suburbs—in St. Louis and elsewhere — they have been resoundingly rejected.

Most advocates of integration have recognized the difficulty of getting effective governmental support at the local level, and they now place more hope in national programs. These are often administered by persons committed to integration, and their discretion in granting Federal funds constitutes a potentially powerful sanction. But so far Federal agencies are long on plans, "pilot studies," "demonstration projects" and speeches that will inspire disheartened integrationists to further effort — and short on tangible results. Why has so little been done?

One reason is that Federal agencies are accountable to elected officials, who, in turn, are accountable to the electorate, and the electorate is not particularly keen on school integration. An instructive case was the attempt in 1965 by Francis Keppel, then United States Commissioner of Education, to enforce Title VI of the Civil Rights Act of 1964, prohibiting disbursement of Federal funds where state and local agencies practiced discrimination in their use. Funds were withheld from the Chicago schools after a redrawing of school district lines increased segregation. In response, Benjamin Willis, the Chicago superintendent of schools, decried Keppel's move as an attack on the "neighborhood school" and local control of education. Meanwhile, the engines of political influence began to turn, and Chicago got its money about two months later. The combination of factors that operated in the Chicago case may not be present elsewhere. But it is understandable if Federal administrators grow cautious after a few episodes of this nature. Much of their apparent discretion in the exercise of Federal sanctions really resides with the people who

appoint them or vote them funds, and these people in turn must stand periodically for election. Many Congressmen from Chicago came strongly to Willis's defense in 1965.

Most arguments for large-scale school integration presume that white parents can be outmaneuvered by paired schools, "educational parks" and squadrons of school buses. But this presumption is unrealistic, for it is the parents rather than the schools that have the greater strategic flexibility. Whatever strategy of integration confronts white parents, they will calculate an effective defense against it — a defense that may not be carried out (because their racism is not unlimited, and because any defensive strategy will have manifold costs and effects), but that many of them have the means to implement whenever they judge integration to constitute a sufficient peril for the welfare of their children.

The whites' main defense against integration is to move, and the general movement is to the suburbs. The desire to avoid racial integration is not the only motive for suburban living. A desire for newer houses or for "rural life" (at least till the next subdivision is built) doubtless plays a part. In America the rich have been abandoning the central city to poorer newcomers for generations, and the current flight to the suburbs, powerfully stimulated by Federal subsidies to housing and highways, merely continues an old trend. But the racial integration of schools does seem to produce short-run accelerations. In the last 15 years more than 215,000 whites have left Washington, D. C. But 40 per cent of them left in the three years following the desegregation of Washington's public schools in 1954, and today 91 per cent of the city's public-school students are black.

Most people who move from a given central city to its suburbs are members of a family with school-age children, while the whites who remain in or move back to the city are disproportionately single, childless or old. By selecting among the wide range of suburbs available, the prospective buyer can find a neighborhood at the limit of his ability to pay, suitable to his aspirations and remarkably free from contaminating heterogeneity.

Because suburbs are so well adapted to the maintenance of class distinctions, they are ill-adapted to many other activities (which accounts for the continued attraction of central cities for the childless), and they are usually expensive. Commuting costs, in money and time, are dear. Property taxes are high (no contaminating industry to bear the bulk of the tax load), but these go mainly to support a school system equal to parents' expectations. The popularity of suburbs with parents shows that they are generally willing to pay the costs involved.

Many of the people who remain in the city do so because they are too involved to leave. They include those who work for municipal agencies (which often require local residence), those enmeshed in a web of neighborhood kinship, those with incomes so low or families so large that they cannot raise the cash for a newer house in the suburbs, and those with strong roots in an ethnic community or parish. All these qualifications apply well to urban Catholics. Recent events in Boston, Milwaukee and Chicago suggest that they are the most vocal (and sometimes violent) opponents of neighborhood and school integration, but this is not necessarily because their racist sentiments are stronger than those of Protestants and Jews who leave the city. The latter tactfully bury their racism in a multiplicity

of "other reasons" for moving; only the immobile Catholics are left to stand and fight.

In a study of the political supporters of Louise Day Hicks, the Boston School Committee's champion of the neighborhood school and *de facto* segregation, it was noted that those most likely to support integration are also least likely to expose their own families to it. The authors of the study observed that Mrs. Hicks had been roundly denounced by white liberals in the Boston area, but these critics lived in the suburbs and could not vote against her. Here lies the problem in trying to assess public support by verbal professions. The Boston liberals have given their most sincere judgment by the residential location of their own families: they have voted with their feet. White parents who eloquently profess liberal opinions in the abstract live in Boston's suburban Newton, in El Cerrito and Mercer Island, but, in the case of one's own children, who says parenthood says conservatism.

More than anything else, the response of large numbers of white parents who are anxious for their children is likely to confound attempts to integrate schools. Families can move across school-district and municipal boundaries far faster than integration plans can. Fathers can commute longer distances than school children can be bused. Sites for new schools can be "strategically chosen" (although sometimes so much controversy attends site selection that school districts simply stop building new schools), but by the time the school is built, the white exodus is well under way, and shortly after it opens the new school is as segregated as the one it was built to replace. Much the same is likely to prove true of the attempt to outflank parents with large-scale "educational parks." To keep up with the volatile white families, the buildings of the grand new park would have to be a fleet of house trailers.

When white parents withdraw their children from the central city, more is lost than students alone. With them go a significant source of tax revenue and, most important, community leadership in programs for good public education. The parents who typically provide this leadership campaign for bond issues, support good teachers and new programs, and generally exercise their influence in ways that will benefit all children in the schools. But they do this because they live in the community and because *their* children will benefit, too. American public education, with its exceptional degree of local control, offers as much as it does to the lower classes (when it offers them very much of anything) not because of a passion for equality among professional educators—whose "life adjustment" curriculum is perfectly compatible with a caste system—but because community elites with a vision of education as an agent of social improvement have sought to apply their own standards to communities as a whole. When these groups finally decide that community schools are "past redemption" and withdraw their support, they produce a situation that is well and truly past redemption.

There is more than a loss of leadership. All over the nation, communities that for decades have passed every proposed school bond issue are now defeating them, and new dissatisfactions triggered by integration campaigns are probably partly responsible. It is not always possible to remedy this situation by raising taxes on industry. Modern factories put as little as possible into unrecoverable investments in land and buildings in order to be free to move where over-all costs are lowest — which is not likely to be a central city with many poor school children and no middle class.

At this point integrationists again resort to the Federal Government. We hear that "Federal bread will feed the urban schools." Will it? Federal grants usually come as programs to which local agencies apply for funds. The Federal guidelines are complex, and preparing applications to comply with them becomes a specialized skill of its own. Just as rich universities hire the best specialists for this purpose, so do rich suburban school districts. An even greater advantage falls to rich districts through the common Federal practice of supplying "matching funds." In short, as more Federal money is allocated to education, there is good reason to predict that affluent white school districts will continue to get their share and a little more besides.

The Office of Education could attempt to counter this by special dispensations for "integrated" schools (which is coming to serve as a euphemism for "black") thus regressing to a racist criterion. But no Congress elected in the next decade or so is likely to pass effective legislation and funds for such a program. The sociologist Thomas Pettigrew, generally an advocate of school integration, has recently reviewed the provisions of the Federal Elementary and Secondary Schools Act and warned his fellow partisans that it contains little that can be used to further integration. Indeed, whatever the legislation, Federal and local education agencies must act within a narrow range of nice distinctions, because many programs to improve the education of black children involve the unequal allocation of resources to students on the basis of their race — the very policy that moved the Supreme Court to its historic decision in 1954.

Even if, against all odds, some strategy for integration of the public schools is devised from which whites cannot escape, there remains the alternative of

parochial and other private schools. Apart from differences due to over-all regional prosperity, American public education is by most measures worst where community elites have forsaken public schooling for their own children and sent them to private schools instead; best where most elite children attend public schools and private schools are uncommon. Anything that motivates prosperous white parents to withdraw support from public education and to transfer it to private agencies weakens education as a force for social mobility and thus favors a more rigid class system, the very system integrationists oppose.

All of these arguments depend, of course, on probabilities and debatable interpretations, and their conclusions are not inevitable. The racism of American whites may change, parents may lose interest in maintaining status, competition among urban governments may disappear, Congress may demand that the United States Office of Education and the Attorney General apply stronger sanctions for integration, white fathers may tire of commuting, public education may be Federalized and private schools outlawed. But it seems more realistic for those who hope to improve the educational opportunities of black children to abandon the premise that integration must come before all else.

The effort to redress racial wrongs can be applied in principle to many different areas of social life in practice it has concentrated on public-school integration. As Oscar Handlin, the Harvard historian, has remarked, "Because segregation enforced by law was long an instrument to oppress the Negro, integration became the primary objective of Americans concerned with equality." But this objective is a poor choice. So much energy has been put into the difficult pursuit of school integration that little remains to plan for more practical improvements within the framework of *de facto* segregation, which is likely to persist anyway.

The assumption is widespread that the only way to help black children is to put them in the same schools as whites. But cannot at least some of the presumed advantages of white schools be transferred — probably much faster than through militant integration? The President's Commission on Civil Disorders recommends this also in its call to "improve greatly the quality of ghetto education." Today many black slum schools are understaffed simply because teachers refuse regular assignments to them (often preferring the wider choice of schools available to substitutes). Premium pay for hazardous and extreme duty (which involves first admitting that it *is* hazardous and extreme duty) might help here. More use might be made of citywide schools with an elite curriculum and admission open competitively to all.

Although a metropolitan school district may have less money per student than suburban or private schools, it still has more in total, and some of its funds might be used to buy facilities and recruit personnel to attract white students. Special elite programs might be housed in ghetto schools. Some small degree of integration would result, with the white students attending the schools a few hours a week, and the programs would also be readily available to black students. High-school scholarships for the disadvantaged might induce some potential dropouts to stay in school who now have (at least in the short run) every economic reason to leave. Large cash prizes for the demonstration of reading ability in high school would be cheap compared with the later social costs of adult illiteracy.

The advocates of integration often appeal to impending crisis. We are told that the damage done to black children through segregation is so terrible and costly that any means of eliminating it is justified, and that rapid integration alone affords relief. But

there has always been much in social life that is terrible and tragic. Rational social action must derive not simply from moral outrage but also from possible means of redress. One might claim with equal fervor that the damage done to the minds and souls of middle-aged women because they have grown sexually unattractive to men is so terrible and costly that any means of eliminating it is justified; and that a redefinition by Federal fiat of nubile appeal alone affords relief. After all, notions of sexual attractiveness, like notions of racism, are mere cultural artifacts.

The facts are that short of truly dictatorial authority over the education of white children, we lack the means to produce widespread school integration so long as white parents do not favor it. This is not to deny that integration benefits black children, but to argue that a concentration on integration programs risks losing many of the more general benefits that public education — even segregated education — can provide for them. It is to be wished that more black children could be exposed to the opportunities of the middle-class world, but the more immediate and prior goal is that many more of them learn to read. Pressing on with integration against all odds may simply eviscerate the public schools and produce more illiterates among the urban poor.

It is still hard to argue against integration. For one thing, it puts one in the bad company of traditional racists. Most of integration's critics have been conservative but highly literate Southerners, who use a graceful homiletic style filled with obsolete references to "human nature" and parochial appeals to common sense. The integrationists thus have their reply cut out for them: they refute the tired old saws of prescientific racism with fresh new facts from modern social science. It thus becomes difficult to criticize integra-

tion without appearing to be unfashionably prescientific.

This essay must risk that appearance. Its object is not to profess what it is currently fashionable to profess, but to explain what moral men only want to condemn, and to predict what will happen as a result of what they propose to do now.

SUPREME COURT OF THE UNITED STATES

No. 740.—October Term, 1967.

Brenda K. Monroe et al., Petitioners, *v.* Board of Commissioners of the City of Jackson, Tenn., et al.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[May 27, 1968.]

Mr. Justice Brennan delivered the opinion of the Court.

This case was argued with No. 695, *Green* v. *County School Board of New Kent County, ante,* p. —, and No. 805, *Raney* v. *Board of Education of the Gould School District, ante,* p. —. The question for decision is similar to the question decided in those cases. Here, however, the principal feature of a desegregation plan—which calls in question its adequacy to effectuate a transition to a racially nondiscriminatory system in compliance with *Brown* v. *Board of Education,* 349 U. S. 294 (*Brown II*)—is not "freedom of choice" but a variant commonly referred to as "free transfer."

The respondent Board of Commissioners is the School Board for the City of Jackson, located in midwestern Tennessee. The school district coincides with the city limits. Some one-third of the city's population of 40,000 are Negroes, the great majority of whom live in the city's central area. The school system has eight elementary schools, three junior high schools, and two senior high schools. There are 7,650 children enrolled in the system's schools, about 40% of whom, over 3,200, are Negroes.

In 1954 Tennessee by law required racial segregation in its public schools. Accordingly, five elementary schools, two junior high schools, and one senior high school were operated as "white" schools, and three ele-

mentary schools, one junior high school, and one senior high school were operated as "Negro" schools. Racial segregation extended to all aspects of school life including faculties and staffs.

After *Brown* v. *Board of Education*, 347 U. S. 483 (*Brown I*), declared such state-imposed dual systems unconstitutional, Tennessee enacted a pupil placement law, Tenn. Code § 49–1741 *et seq.* (1966). That law continued previously enrolled pupils in their assigned schools and vested local school boards with the exclusive authority to approve assignment and transfer requests. No white children enrolled in any "Negro" school under the statute and the respondent Board granted only seven applications of Negro children to enroll in "white" schools, three in 1961 and four in 1962. In March 1962 the Court of Appeals for the Sixth Circuit held that the pupil placement law was inadequate "as a plan to convert a biracial system into a nonracial one." *Northcross* v. *Board of Education of City of Memphis*, 302 F. 2d 818, 821.

In January 1963 petitioners brought this action in the District Court for the Western District of Tennessee. The complaint sought a declaratory judgment that respondent was operating a compulsory racially segregated school system, injunctive relief against the continued maintenance of that system, an order directing the admission to named "white" schools of the plaintiff Negro school children, and an order requiring respondent Board to formulate a desegregation plan. The District Court ordered the Board to enroll the children in the schools in question and directed the Board to formulate and file a desegregation plan. A plan was duly filed and, after modifications directed by the court were incorporated, the plan was approved in August 1963 to be effective immediately in the elementary schools and to be gradually extended over a four-year period to the junior high schools and senior high schools. 221 F. Supp. 968.

The modified plan provides for the automatic assignment of pupils living within attendance zones drawn by the Board or school officials along geographic or "natural" boundaries and "according to the capacity and facilities of the [school] buildings . . ." within the zones. *Id.*, at 974. However, the plan also has the "free-transfer" provision which was ultimately to bring this case to this Court: Any child, after he has complied with the requirement that he register annually in his assigned school in his attendance zone, may freely transfer to another school of his choice if space is available, zone residents having priority in cases of overcrowding. Students must provide their own transportation; the school system does not operate school buses.

By its terms the "free-transfer" plan was first applied in the elementary schools. After one year of operation petitioners, joined by 27 other Negro school children, moved in September 1964 for further relief in the District Court, alleging respondent had administered the plan in a racially discriminatory manner. At that time, the three Negro elementary schools remained all Negro; and 118 Negro pupils were scattered among four of the five formerly all-white elementary schools. After hearing evidence, the District Court found that in two respects the Board had indeed administered the plan in a discriminatory fashion. First, it had systematically denied Negro children—specifically the 27 intervenors—the right to transfer from their all-Negro zone schools to schools where white students were in the majority, although white students seeking transfers from Negro schools to white schools had been allowed to transfer. The court held this to be a constitutional violation, see *Goss* v. *Board of Education*, 373 U. S. 683, as well as a violation of the terms of the plan itself. 244 F. Supp. 353, 359. Second, the court found that the Board, in drawing the lines of the geographic attendance zones, had gerry-

mandered three elementary school zones to exclude Negro residential areas from white school zones and to include those areas in zones of Negro schools located farther away. *Id.*, at 361–362.

In the same 1964 proceeding the Board filed with the court its proposed zones for the three junior high schools, Jackson and Tigrett, the "white" junior high schools, and Merry, the "Negro" junior high school. As of the 1964 school year the three schools retained their racial identities, although Jackson did have one Negro child among its otherwise all-white student body. The faculties and staffs of the respective schools were also segregated. Petitioners objected to the proposed zones on two grounds, arguing first that they were racially gerrymandered because so drawn as to assign Negro children to the "Negro" Merry school and white children to the "white" Jackson and Tigrett schools, and alternatively that the plan was in any event inadequate to reorganize the system on a nonracial basis. Petitioners, through expert witnesses, urged that the Board be required to adopt a "feeder system," a commonly used method of assigning students whereby each junior high school would draw its students from specified elementary schools. The groupings could be made so as to assure racially integrated student bodies in all three junior high schools, with due regard for educational and administrative considerations such as building capacity and proximity of students to the schools.

The District Court held that petitioners had not sustained their allegations that the proposed high school attendance zones were gerrymandered, saying

> "Tigrett [white] is located in the western section, Merry [Negro] is located in the central section and Jackson [white] is located in the eastern section. The zones proposed by the defendants would, generally, allocate the western section to Tigrett, the

> central section to Merry, and the eastern section to Jackson. The boundaries follow major streets or highways and railroads. According to the school population maps, there are a considerable number of Negro pupils in the southern part of the Tigrett zone, a considerable number of white pupils in the middle and northern parts of the Merry zone, and a considerable number of Negro pupils in the southern part of the Jackson zone. The location of the three schools in an approximate east-west line makes it inevitable that the three zones divide the city in three parts from north to south. While it appears that proximity of pupils and natural boundaries are not as important in zoning for junior highs as in zoning for elementary schools, it does not appear that Negro pupils will be discriminated against." 244 F. Supp., at 362.

As for the recommended "feeder system," the District Court concluded simply that "there is no constitutional requirement that this particular system be adopted." *Ibid.* The Court of Appeals for the Sixth Circuit affirmed except on an issue of faculty desegregation, as to which the case was remanded for further proceedings. 380 F. 2d 955. We granted certiorari, 389 U. S. 1033, and set the case for oral argument immediately following *Green* v. *County School Board, supra.* Although the case presented by the petition for certiorari concerns only the junior high schools, the plan in its application to elementary and senior high schools is also necessarily implicated since the right of "free transfer" extends to pupils at all levels.

The principles governing determination of the adequacy of the plan as compliance with the Board's responsibility to effectuate a transition to a racially nondiscriminatory system are those announced today in *Green* v. *County School Board, supra.* Tested by those

principles the plan is clearly inadequate. Three school years have followed the District Court's approval of the attendance zones for the junior high schools. Yet Merry Junior High School was still completely a "Negro" school in the 1967–1968 school year, enrolling some 640 Negro pupils, or over 80% of the system's Negro junior high school students. Not one of the "considerable number of white pupils in the middle and northern parts of the Merry zone" assigned there under the attendance zone aspect of the plan chose to stay at Merry. Every one exercised his option to transfer out of the "Negro" school. The "white" Tigrett school seemingly had the same experience in reverse. Of the "considerable number of Negro pupils in the southern part of the Tigrett zone" mentioned by the District Court, only seven are enrolled in the student body of 819; apparently all other Negro children assigned to Tigrett chose to go elsewhere. Only the "white" Jackson school presents a different picture; there, 349 white children and 135 Negro children comprise the student body. How many of the Negro children transferred in from the "white" Tigrett school does not appear. The experience in the junior high schools mirrors that of the elementary schools. Thus the three elementary schools that were operated as Negro schools in 1954 and continued as such until 1963 are still attended only by Negroes. The five "white" schools all have some Negro children enrolled, from as few as three (in a student body of 781) to as many as 160 (in a student body of 682).

This experience with "free transfer" was accurately predicted by the District Court as early as 1963:

> "In terms of numbers . . . the ratio of Negro to white pupils is approximately 40–60. This figure is, however, somewhat misleading as a measure of the extent to which integration will actually occur

> under the proposed plan. Because the homes of Negro children are concentrated in certain areas of the city, a plan of unitary zoning, even if prepared without consideration of race, will result in a concentration of Negro children in the zones of heretofore 'Negro' schools and white children in the zones of heretofore 'white' schools. *Moreover, this tendency of concentration in schools will be further accentuated by the exercise of choice of schools . . . .*" 221 F. Supp., at 971. (Emphasis supplied.)

Plainly, the plan does not meet respondent's "affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." *Green* v. *County School Board, supra,* at p. 7. Only by dismantling the state-imposed dual system can that end be achieved. And manifestly, that end has not been achieved here nor does the plan approved by the lower courts for the junior high schools promise meaningful progress toward doing so. "Rather than further the dismantling of the dual system, the ["free transfer"] plan has operated simply to burden children and their parents with a responsibility which *Brown II* placed squarely on the School Board." *Green* v. *County School Board, supra,* at p. 11. That the Board has chosen to adopt a method achieving minimal disruption of the old pattern is evident from its long delay in making any effort whatsoever to desegregate, and the deliberately discriminatory manner in which the Board administered the plan until checked by the District Court.

The District Court approved the junior high school attendance-zone lines in the view that as drawn they assigned students to the three schools in a way that was capable of producing meaningful desegregation of all three schools. But the "free-transfer" option has

permitted the "considerable number" of white or Negro students in at least two of the zones to return, at the implicit invitation of the Board, to the comfortable security of the old, established discriminatory pattern. Like the transfer provisions held invalid in *Goss* v. *Board of Education*, 373 U. S. 683, 686, "[i]t is readily apparent that the transfer [provision] lends itself to perpetuation of segregation." While we there indicated that "free-transfer" plans under some circumstances might be valid, we explicitly stated that "no official transfer plan or provision of which racial segregation is the inevitable consequence may stand under the Fourteenth Amendment." *Id.*, at 689. So it is here; no attempt has been made to justify the transfer provision as a device designed to meet "legitimate local problems," *ibid.*; rather it patently operates as a device to allow *resegregation* of the races to the extent desegregation would be achieved by geographically drawn zones. Respondent's argument in this Court reveals its purpose. We are frankly told in the Brief that without the transfer option its is apprehended that white students will flee the school system altogether. "But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them." *Brown II*, at 300.

We do not hold that "free transfer" can have no place in a desegregation plan. But like "freedom of choice," if it cannot be shown that such a plan will further rather than delay conversion to a unitary, nonracial, nondiscriminatory school system, it must be held unacceptable. See *Green* v. *County School Board, supra*, at pp. 9–11.

We conclude, therefore, that the Board "must be required to formulate a new plan and, in light of other courses which appear open to the Board, . . . fashion steps which promise realistically to convert promptly to a

system without a 'white' school and a 'Negro' school, but just schools." *Id.*, at pp. 11–12.*

The judgment of the Court of Appeals is vacated insofar as it affirmed the District Court's approval of the plan in its application to the junior high schools, and the case is remanded for further proceedings consistent with this opinion and with our opinion in *Green* v. *County School Board, supra.*

It is so ordered.

*We imply no agreement with the District Court's conclusion that under the proposed attendance zones for junior high schools "it does not appear that Negro pupils will be discriminated against." We note also that on the record as it now stands, it appears that petitioners' recommended "feeder system," the feasibility of which respondent did not challenge in the District Court, is an effective alternative reasonably available to respondent to abolish the dual system in the junior high schools.